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Supreme Court, U.S.
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VOLUME I
APPENDIX

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 70-74

PIPEFITTERS LOCAL UNION NO. 562, Et Al.,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 29, 1971

CERTIORARI GRANTED MAY 24, 1971

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

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UNITED STATES OF AMERICA,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX

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* * * * * * * *

68 Cr 99 (3)

The United States

v.

Pipefitters Local Union No. 562, etc., et al.

* * * * * * * *

Date	Proceedings
1968	
May 9	Indictment filed.
	Order filed fixing bond of defts. Callanan, Lawler and Seaton in sum of $1000 ea. On separate praecipes filed by U. S. Atty., warrants issued for each of aforesaid defts. ret. forthwith.
	On praecipe filed by U. S. Atty., summons issued to deft. Pipefitters Local Union 562, St. Louis, Mo., ret. June 3, 1968.
May 10	Separate bonds of defts. Callanan, Seaton and Lawler in sum of $1,000 each, made returnable in Ct. 3 on June 3, filed (Raymond Salami—Surety on each bond).
May 13	Marshal's return to Summons filed; executed on Pipefitters Local Union No. 562 by delivery to Lawrence L. Callanan, its Business Mgr., on May 10, 1968.
	Marshal's Return to Warrant of Arrest of Defendant Callanan filed; executed on deft. Calla-

nan on May 10, 1968, deft. released on $1,000.00 bond.

Marshal's return to Warrant of Arrest of Defendant Lawler filed; executed on deft. Lawler on May 10, 1968, deft. released on $1,000.00 bond.

Marshal's return to Warrant of Arrest of Defendant Seaton filed; executed on deft. Seaton on May 10, 1968, deft. released on $1,000.00 bond.

June 3 Defendants Callanan and Lawler appear with James F. Nangle and Richard L. Daly, their attorneys, and defendant Seaton appears with James F. Nangle and Murry L. Randall, his attorneys.

Each defendant waives formal arraignment and enters plea of not guilty to Indictment. Defendants granted to July 31, 1968, to file contemplated motions and case set for trial on September 3, 1968.

June 21 Motion of defendants for return by the Government to the defendants of their records previously subpoenaed by the Government, filed. Argument requested.

June 24 Defendants' memo in support of motion for return by the Government to the defendants of defendants' records previously subpoenaed from them filed.

July 31 Motions of defendants (1) to dismiss Indictment (2) for discovery and inspection under Rule 16; (3) for bill of particulars; (4) to inspect Grand Jury minutes (5) to inspect all evidence in possession of the Government favorable to defendant; (6) for an indefinite continuance and (7) to strike, filed. Argument requested. Separate

motions of defendants Callanan; Lawler and Seaton, for a severance under Rule 14 FRCrP, filed. Argument requested.

Aug. 1 All pending motions set for argument on Aug. 9, at 10 A.M. Counsel notified by BS.

Aug. 5 Joint memo of defendants in support of their motions to dismiss; brief on several discovery motions and brief on motion for severance filed and delivered to J. Regan.

Aug. 9 Motion of defts. to dismiss indictment argued and submitted. Motions of defts. for discovery and inspection under Rule 16; for bill of particulars; to inspect Grand Jury minutes; to inspect all evidence in possession of the Govt. favorable to defts.; to strike, for a severance, taken as submitted. Motion of defts. for an indefinite continuance heard, argued and submitted. Motion for return by the Govt. to defts. of defts' records previously subpoenaed from them argued and submitted. Plff's brief in opposition to several motions filed. Plff's motion for discovery and inspection pursuant to Rule 160 of FRCrP filed. Plff's briefs in opposition to defts' motion for bill of particulars and to dismiss indictment filed.

Aug. 12 Marshal's return to Subpoena to Produce Document or Object filed, executed on Managing Editor, St. Louis Globe-Democrat, 8/8/68.

Marshal's return to Subpoena to Produce Document or Object filed, executed on Managing Editor, St. Louis Post Dispatch, 8/8/68.

Aug. 14 Order filed overruling motions of defts. for severance and separate trial.

Order filed overruling motions of defendants to dismiss indictment.

Order filed overruling motions of defts. for discovery and inspection.

Order filed overruling motions of defts. for bill of particulars.

Order filed overruling motions of defendants to inspect and copy Grand Jury minutes.

Order filed overruling motions of defts. to inspect all evidence in possession of the Govt. favorable to defts.

Order filed denying motions of defts for an indefinite continuance of the trial.

Order filed overruling motions of defts. to strike certain allegations of the Indictment.

Order filed on motions of defts for return by Govt. to defts. all records, previously subpoened. It having been shown by the Ct. that all said records have heretofore been returned to defts by the Govt., said motion hereby denied as moot.

Aug. 14 Copy of nine orders mailed to attorneys James F. Nangle, Richard L. Daly and Murry L. Randall.

Aug. 22 Marshal's returns to subpoenas filed. Executed on A. Bralosci, 8/19/68; executed on L. J. Andrews, 8/21/68; executed on C. Anagnost, 8/21/68.

Aug. 23 Order filed; each defendant is granted an additional two challenges, for a total of eighteen (18) which challenges may be exercised jointly; copy of order mailed by e. d. to attorneys of record Randall, Nangle & Daly and U. S. Attorney.

Aug. 23 Marshal's return filed; subpoenas executed on Thomas Sory, Robert A. Durchek, Wm. M. Dooley, Patrick Becherer, Rather P. Avery, Geo. A. Miller, Charles R. Simmons, Jr., Alfred M. Smith, Forrest Snow, Ken Olivio, Joseph Ryan, John Ellison, all on 8-20-68.

Aug. 27 Marshal's return filed; subpoenas executed on Bobby N. George, and Charles Binney on 8/24/68; and Jack Tebbs, on 8/24/68; on Larry J. Crawford and Albert McGinty on 8/25/68.

Aug. 27 Renewed motion of defendants for continuance, filed; cause set for argument on Thursday Aug. 29, 1968, at 10:00 A. M.
Transcript of proceedings had Aug. 9, 1968, filed by Official Court Reporter.

Aug. 28 Marshal's returns filed; subpoenas executed on Dillon Ross, James R. Barnes, Marie C. Schulz, Gertrude Krost, Herbert Morissee, Jos. D. Weis, Albert W. Lakebrink, all on 8/26/68.

Aug. 29 Marshal's return filed; subpoenas executed on C. L. Edwards 8/24/68 and on John G. Doran, Mrs. Blanche Helwig, and Hank Claubaugh, on 8/27/68.

Aug. 29 Renewed motion of defendants for continuance argued, submitted and overruled; notice of ruling mailed by e. d. to attorneys Daly, Randall & Nangle and U. S. Attorney.

Aug. 30 Marshal's returns filed; subpoenas executed on Leonard Barbour, Harold A. Foley, L. A. Thompson, Patricia Stieferman, and Edw. Steska, on 8/27/68 and on Eugene Wrobel and Robert G. Davis on 8/28/68.

Sept. 3 James F. Nangle, Jr., withdraws entries of appearance previously filed and enters his appear-

ance as attorney for Pipefitters Local Union No. 562.

Comes Murry L. Randall and withdraws his appearance previously filed entered for the defts Seaton and reenters his appearance for the defts Local No. 562 and Lawler.

Norman S. London enters his appearance as atty for defts. Pipefitter Local Union No. 562 and as atty for Geo. Seaton.

Richard L. Daly withdraws the entries of appearance previously filed in this case and enters his appearance for Local No. 562 and Lawrence Callanan.

Deft. Local 562 appears with James F. Nangle, Murry L. Randall, Norman S. London and Richard L. Daly, its attys.; Deft. Lawler appears with Murry L. Randall; Deft. Seaton with Norman S. London, his atty.; and deft. Callanan with Richard L. Daly, his atty.

Defts having heretofore entered pleas of not guilty to Indictment and cause having been set for trial this day, parties announce ready.

Jury empaneled and alternate jurors Richard E. Nolle and Dwight Rodda empaneled. Jury and alternate jurors sworn. Plff's evidence commenced but not concluded.

pt. 3 Further proceedings on trial postponed until tomorrow at 9:00 A.M.

pt. 4 The defts' attys., trial jury, and alternate jurors heretofore empaneled and sworn on trial of this cause being present: Introduction of evidence in chief on behalf of the pltff is resumed but not concluded. Upon adjournment, ordered, fur-

ther proceedings postponed until tomorrow at 9:15 A.M.

Sept. 5 The defendants, their attorney and jury and alternate jurors heretofore empaneled being present, introduction of evidence in chief on behalf of the plaintiff on trial is resumed but not concluded. Upon adjournment, further proceedings ordered postponed until Monday, Sept. 9, 1968, at 9:00 A.M.

Sept. 5 to Sept. 9 Marshal's returns filed; subpoenas executed on witness James Stiffler 9/1/68; on Emil C. Endermuhle, Thomas Britton, Guy F. Richardson, Jr., on 8/30/68 and on James D. Kelley, Tom Williams, Chester A. Cieslak, Gene Marshall; Albert M. Fagan, Edward Beck, Thomas Lee Flynn, Jack J. Collom, Layne A. Mohr, John R. Menke, E. Gissing, on 8/31/68 and returned unexecuted on Robert R. Boxley and executed on Gerald R. Dillon 8/28/68; on Walter Seianas, A. W. Van Metter, and Tom L. Evans on 8/27/68; on Edward F. Steiner, George A. Greenfield, Roland B. Day, George Babaz, Harvard E. Borchardt, on 8/28/68; on John Greer, William Sonsler, R. Emmet Brodley, James Dale Blex, on 8/29/68; on Joseph Calvin Rardin, Thomas David, on August 30, 1968, and Jimmy G. Hendrickson, Dan Long, on 9/5/68, and subpoenas returned unexecuted on Wm. M. McCandless, Paul Porter and Peter T. Schoemann, subpoenas executed on: George T. Kelley, 9/4/68 and James A. Sassa, E. W. Stearns, and Richard Van Blon on 8/29/68.

Sept. 9 continued:

The defendant's attorney, jury and alternate jurors heretofore empaneled and sworn on trial being present introduction of evidence on behalf of the plaintiff on trial is resumed but not

concluded; further proceedings postponed until tomorrow at 9:00 A.M.

Sept. 10 The defendants attorneys, jury and alternate jurors heretofore sworn being present introduction of evidence in chief on behalf of the plaintiff on trial is resumed but not concluded; further proceedings postponed until tomorrow at 9:00 A.M.

Sept. 11 Marshal's return filed; subpoenas executed on Kenneth Worland on 8/28/68; on Angelo G. Geocaris on 8/29/68, George J. Laird, Molly Massi, Geo. James Laird on 8/30/68, Oran John Feidler on 8/31/68, Wayne F. Hobbs 9/1/68, on John W. Schuler on 9/3/68, George H. Charno on 9/3/68, John Crisan, Sr., on 9/4/68; Jim Skaggs, Edward Merrigan, John J. Whalen, on 9/5/68; Norman Baker and Peter T. Schoenemann on 9/6/68, Richard Maguire and Mrs. Chester W. Sarff on 9/7/68.

Sept. 11 Jury trial resumed; plaintiff's evidence resumed and concluded. Separate motions of defendants Callanan, Seaton, Law and Pipefitter Local Union No. 562 for judgment of acquittal filed at close of plaintiff's case presented and overruled. Further proceedings on trial postponed until tomorrow at 9:00 A.M.

Sept. 12 Jury trial resumed; evidence on behalf of defendants commenced. Further proceedings postponed until tomorrow at 9:00 A.M.

Sept. 12 Marshal's returns filed; subpoenas executed on John B. Seeck and Vincent J. Politio 9/8/68; Edw. McReake and Clark Matthews on 9/6/68; John P. O'Laughlin, and Gene Puhl on 9/7/68; and Frank Wyns on 9/7/68; Thomas Conroy,

Geo. Pantazi, and Walter E. Detrich on 9/9/68; Edward Langendorf could not be found and return unexecuted on Melton D. Harmon on instructions of U.S. Attorney.

Sept. 13 Jury trial resumed. Defendants' evidence resumed but not concluded and trial continued to Sept. 16, 1968, at 9:00 A.M.

Sept. 16 Jury trial resumed. Defendants' evidence resumed but not concluded and further proceedings on trial postponed until tomorrow at 9:00 A.M.

Sept. 17 Jury trial resumed. Defendants' evidence resumed and concluded. Motions of defendants Pipefitters, etc., Callanan, Lawler and Seaton for judgment of acquittal at close of all the evidence filed, submitted and denied. Further proceedings postponed until tomorrow at 10:00 A.M.

Sept. 18 Marshal's return filed; subpoena executed on Sal Catale on 9/9/68.

Sept. 18 Jury trial resumed. After arguments of counsel and charge by the Court, the jury retires to consider its verdict and alternate jurors Richard E. Nolle and Dwight Rodda are excused from further consideration of this case; thereafter, the jury not having reached a verdict at the hour of 11:15 P.M., it is impounded by the Court to the custody of Duane Caldwell, U.S. Marshal and Charles Lovell, Court Bailiff and said parties take the prescribed oath to keep said jury in charge.

Sept. 19 Again come parties, counsel and jury empaneled and sworn on trial of cause; whereupon the jury retires to further deliberate upon its verdict;

thereafter, the jury returns into Court its verdict finding each of defendants Pipefitters Local No. 562, Lawrence L. Callanan, John L. Lawler, and George Seaton GUILTY AS CHARGED IN THE INDICTMENT, and further finding a willful violation of Sec. 610 T. 18 USC was not contemplated.

On motion of defendants jury is polled and the members thereof individually as called acknowledge said verdict as their true verdict and finding herein.

Verdict filed. Imposition of sentences deferred to September 27, at 9:00 A.M. and defendants continued on their existing bonds until aforesaid date.

Sept. 20 Marshal's return filed; subpoena unexecuted on Ernest T. Sieve on advice of U.S. Attorney.

Sept. 25 Marshal's returns filed; subpoenas returned unexecuted on Ben Meloan, Robert Kofron, Campbell Parson, Frank Barnhardt, Floyd E. Smith, Clark Walter Wallace (could not be found).

Sept. 27 Defendant Local 562 appears by its attorneys Jas. F. Nangle; Murry L. Randall; Norman S. London and Richard L. Daly; defendant Lawler appears with Murry L. Randall, his attorney; defendant Seaton appears with Norman S. London, his attorney; and defendant Callanan appears with Richard L. Daly, his attorney, for imposition of sentences under verdict heretofore returned by a jury finding each of aforesaid defendants guilty as charged in the Indictment and further finding that a willful violation of Sec. 610 T. 18 USC was not contemplated.

Punishment of defendant Local 562 fixed at a fine of $5,000 collectible on execution.

Defendant Lawler sentenced to IMPRISONMENT FOR ONE (1) YEAR, and punishment further fixed at a fine of $1,000, collectible on execution; defendant released on his present bond pending appeal.

Defendant Seaton sentenced to IMPRISONMENT FOR ONE (1) YEAR, and punishment further fixed at a fine of $1,000 collectible on execution; defendant released on his present bond pending appeal.

Defendant Callanan sentenced to IMPRISONMENT FOR ONE (1) YEAR, and punishment further fixed at a fine of $1,000, collectible on execution; defendant released on his present bond pending appeal. Regan, J.

Separate judgments and commitments filed and entered; certified copies issued to U.S. Marshal.

Sept. 29 Notice of appeal of defendants Pipefitters Local Union No. 562, Lawrence L. Callanan, John L. Lawler and Geo. Seaton, from judgment and sentence imposed upon them this day filed and such notice together with docket entries mailed to Clerk of USCA. Copy of appeal mailed to U.S. Attorney and to the defendants.

INDICTMENT.

(Filed in U. S. District Court May 9, 1968.)

(Arraignment June 3 Before District Judge John K. Regan.)

United States District Court,
Eastern District of Missouri.

United States of America, Plaintiff, v. Pipefitters Local Union No. 562, St. Louis, Missouri, Affiliated With the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, Lawrence L. Callanan, John L. Lawler, George Seaton, Defendants.	No. ..... Violation: 18 U. S. C. 371.

The Grand Jury charges:

1. That at all times hereinafter mentioned defendant Pipefitters Local Union No. 562, St. Louis, Missouri, (hereinafter referred to as Local 562), affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (hereinafter referred to as the United Association), was a labor organization within the meaning of Section 610 of Title 18, United States Code, that is to say, an organization in which employees participated and which existed, in part, for the purpose of dealing with employers concerning grievances, labor

disputes, wages, rates of pay, hours of employment, or conditions of work.

2. That at all times hereinafter mentioned John F. Burke was an officer of defendant Local 562.

3. That from on or about October 12, 1966, up to and including the date of the filing of this indictment, defendant Lawrence L. Callanan was an officer of defendant Local 562.

4. That at all times hereinafter mentioned defendant John L. Lawler was an officer of defendant Local 562.

5. That at all times hereinafter mentioned, defendant George Seaton was an officer of defendant Local 562.

6. That at all times hereinafter mentioned Edward J. Steska was an officer of defendant Local 562.

7. That at all times hereinafter mentioned, the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund (hereinafter the Fund), was a fund of defendant Local 562, established, maintained, and administered by officers, employees, members, agents, foremen and job stewards of defendant Local 562, to effect a regular and systematic collection, receipt, and expenditure of moneys obtained from working members of defendant Local 562 and from working members of other labor organizations employed under the jurisdiction of defendant Local 562.

8. That at all times hereinafter mentioned, the term 1964 General Election refers to the general election held in 1964 pursuant to the laws of the United States and of the several states at which, among others, Presidential and Vice Presidential electors, United States Senators and Representatives to Congress were voted for, and the term 1966 General Election refers to the general election held in 1966 pursuant to the laws of the United States and of the several states at which, among others, United

States Senators and Representatives to Congress were voted for.

9. That from in or about 1963 and continuously thereafter up to and including the date of the filing of this indictment, in the City of St. Louis, in the Eastern District of Missouri and elsewhere, Local 562, Lawrence L. Callanan, John L. Lawler and George Seaton, the defendants herein, and John F. Burke and Edward J. Steska, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did conspire and agree with each other and with divers other persons to the grand jurors unknown, to violate Section 610 of Title 18, United States Code in that they did unlawfully, wilfully, and knowingly conspire and agree to have Local 562 make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for, and to wilfully consent to the making of such contributions and expenditures by Local 562.

10. It was a part of said conspiracy that the defendants and co-conspirators would establish and maintain a special fund entitled "Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund," which fund would have the appearance of being a wholly independent entity, separate and apart from Local 562; and that the defendants and co-conspirators would thereby conceal the fact that Local 562 would make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for.

11. It was further a part of the conspiracy that defendant John L. Lawler would be Director of the Fund and that at a certain time he would be succeeded as Di-

rector of the Fund by defendant Lawrence L. Callanan; and that the Director of the Fund would appear to have control and management of the Fund, including the receipt and disbursement of money and the keeping of its books.

12. It was further a part of the conspiracy that defendants John L. Lawler and Lawrence L. Callanan would not have the books of the Fund audited, or afford members of defendant Local 562 and other pipefitters contributing to the Fund any accounting for the money on hand, paid into or disbursed from the Fund.

13. It was further a part of the conspiracy that the defendants and co-conspirators, by means of the creation and operation of the Fund, would continue in new form the practice of collecting for political purposes One Dollar ($1.00) per day worked from members of defendant Local 562 and Two Dollars ($2.00) per day worked from non-member pipefitters employed on jobs within the jurisdiction of defendant Local 562.

14. It was further a part of the conspiracy that the defendants and co-conspirators would waive and fail to enforce Section 180 of the Constitution of the United Association in order to facilitate the payment of monies into the Fund, by failing to collect from non-members of Local 562, working under its jurisdiction, a required travel card fee of not in excess of Eight Dollars ($8.00) per month, and in lieu thereof, collecting payments to the Fund at the rate of Two Dollars ($2.00) per eight-hour working day from such non-members.

15. It was further a part of the conspiracy that the defendants and co-conspirators would cause general foremen, area foremen, job stewards, officers, agents, employees and other members of Local 562 acting in a supervisory capacity over members and pipefitters work-

ing on jobs under the jurisdiction of Local 562, to become agents of the Fund in order to facilitate the collection of monies for the Fund on a regular basis on job sites and at the headquarters of Local 562, 1242 Pierce Avenue, St. Louis, Missouri.

16. It was further a part of the conspiracy that the defendants and co-conspirators, in order to facilitate an orderly, regular and systematic collection of contributions to the Fund, would cause the agents of the Fund, referred to in paragraph 15 of this Indictment to distribute to the pipefitters working at all job sites contribution agreement cards to be signed by such pipefitters, and to distribute to foremen and job stewards at such job sites printed collection sheets for the Fund upon which to record the number of hours worked by such pipefitters and the amount of the contributions paid by each into the Fund; and that such foremen or job stewards would advise newly employed pipefitters at such job sites of the existence of the Fund and of the rates of participation, that is, for members of Local 562, One Dollar ($1.00) per eight hours worked; and after January 1, 1965, Fifty Cents ($.50) per eight hours worked, and for members of other pipefitter locals Two Dollars ($2.00) per eight hours worked.

17. It was further a part of the conspiracy that defendant Local 562 would make substantial contributions in connection with the 1964 General Election and the 1966 General Election and that defendants Lawrence L. Callanan and John L. Lawler would consent to such contributions by issuing checks drawn upon the account of the Fund in the approximate total amount of One Hundred Fifty Thousand Dollars ($150,000).

18. In pursuance of the aforesaid conspiracy and to effect the objects thereof, the defendants performed the following and other overt acts.

Overt Acts

1. On or about January 8, 1963, defendant John L. Lawler caused an order to be placed with the Marvel Printing Company, 912 North 7th Street, St. Louis, Missouri, calling for the production of 2500 Voluntary Fund Agreement Cards.

2. On or about January 15, 1963, defendant John L. Lawler caused a checking account to be opened in the name of the "Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund" at the State Bank and Trust Company of Wellston in St. Louis, Missouri.

3. On or about January 22, 1963, defendant George Seaton received the production order referred to in overt act No. 1.

4. On or about January 22, 1963, defendant John L. Lawler caused check No. 105 to be issued on the account of the Fund in the amount of Forty Dollars Eighty Cents ($40.80), payable to the order of the Marvel Printing Company.

5. On or about February 13, 1963, co-conspirators Edward J. Steska and John F. Burke met with members of defendant Local 562 in St. Louis, Missouri.

6. On or about January 30, 1963, defendant John L. Lawler caused an order to be placed with the Marvel Printing Company, 912 North 7th Street, St. Louis, Missouri, calling for the production of 25 books of "Weekly Report" collection sheets.

7. On or about February 2, 1963, defendant John L. Lawler caused check No. 120 to be issued on the account of the Fund in the amount of Forty-eight Dollars Ninety-six Cents ($48.96) payable to the order of the Marvel Printing Company, 912 North 7th Street, St. Louis, Missouri.

8. On or about January 28, 1964, defendant John L. Lawler caused a checking account to be opened in the name of the "Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund" at the City Bank, 4981 West Pine, St. Louis, Missouri.

9. On or about January 28, 1964, defendant John L. Lawler deposited Fifty-eight Thousand Eight Hundred Eighty-seven Dollars Eighteen Cents ($58,887.18) in the account of the Fund mentioned in overt act No. 8.

10. On or about October 15, 1964, defendant Lawrence L. Callanan became Director of the Fund.

11. On or about November 3, 1965, defendants Lawrence L. Callanan, John L. Lawler and George Seaton, and co-conspirators John F. Burke and Edward J. Steska, met at 1242 Pierce Avenue, St. Louis, Missouri.

12. On or about November 10, 1965, defendants Lawrence L. Callanan, John L. Lawler and George Seaton, and co-conspirators John F. Burke and Edward J. Steska met at 5850 Elizabeth Avenue, St. Louis, Missouri.

13. On or about January 20, 1966, defendant Lawrence L. Callanan caused a checking account to be opened in the name of the "Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund," at the Southwest Bank of St. Louis, 2301 South Kingshighway, St. Louis, Missouri.

14. On or about August 24, 1966, defendant Lawrence L. Callanan caused a checking account to be opened in the name of the "Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund," at the American National Bank, 6639 South Kingshighway, St. Louis, Missouri.

15. On or about September 1, 1967, defendant Lawrence L. Callanan caused a deposit in the amount of One

Hundred One Thousand Seventy-seven Dollars ($101,077) to be made to the account mentioned in overt act No. 13.

16. On or about February 21, 1964, defendant John L. Lawler caused to be issued check No. 370 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of Five Thousand Dollars ($5,000).

17. On or about May 18, 1964, defendant John L. Lawler caused to be issued check No. 452 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

18. On or about May 18, 1964, defendant John L. Lawler caused to be issued check No. 453 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

19. On or about May 19, 1964, defendant John L. Lawler caused to be issued check No. 455 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis Missouri, in the amount of Five Hundred Dollars ($500).

20. On or about May 19, 1964, defendant John L. Lawler caused to be issued check No. 458 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

21. On or about May 25, 1964, defendant John L. Lawler caused to be issued check No. 462 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Five Hundred Dollars ($1,500).

22. On or about May 25, 1964, defendant John L. Lawler caused to be issued check No. 463 drawn on the account of the Fund at the State Bank and Trust Company

of Wellston, St. Louis, Missouri, in the amount of One Thousand Five Hundred Dollars ($1,500).

23. On or about May 25 1964, defendant John L. Lawler caused to be issued check No. 464 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Hundred Dollars ($100).

24. On or about May 25, 1964, defendant John L. Lawler caused to be issued check No. 465 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

25. On or about August 18, 1964, defendant John L. Lawler caused to be issued check No. 603 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Hundred Dollars ($100).

26. On or about September 29, 1964, defendant John L. Lawler caused to be issued check No. 680 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri in the amount of Two Thousand Dollars ($2,000).

27. On or about September 29, 1964, defendant John L. Lawler caused to be issued check No. 681 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

28. On or about October 8, 1964, defendant John L. Lawler caused to be issued check No. 688 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of Two Thousand Dollars ($2,000).

29. On or about October 13, 1964, defendant John L. Lawler caused to be issued check No. 694 drawn on the

account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

30. On or about October 13, 1964, defendant John L. Lawler caused to be issued check No. 695 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

31. On or about October 13, 1964, defendant John L. Lawler caused to be issued check No. 696 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

32. On or about October 13, 1964, defendant John L. Lawler caused to be issued check No. 697 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

33. On or about October 16, 1964, defendant John L. Lawler caused to be issued check No. 704 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

34. On or about October 16, 1964, defendant John L. Lawler caused to be issued check No. 705 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of Two Thousand Five Hundred Dollars ($2,500).

35. On or about October 16, 1964, defendant John L. Lawler caused to be issued check No. 706 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of Twenty-five Thousand Dollars ($25,000).

36. On or about October 16, 1964, defendant John L. Lawler caused to be issued check No. 707 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of Ten Thousand Dollars ($10,000).

37. On or about October 21, 1964, defendant John L. Lawler caused to be issued check No. 708 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of Two Thousand Five Hundred Dollars ($2,500).

38. On or about October 28, 1964, defendant John L. Lawler caused to be issued check No. 713 drawn on the account of the Fund at the State Bank and Trust Company of Wellston, St. Louis, Missouri, in the amount of Twenty-five Thousand Dollars ($25,000).

39. On or about April 8, 1965, defendant Lawrence L. Callanan caused to be issued check No. 272 drawn on the account of the Fund at the City Bank, St. Louis, Missouri, in the amount of Five Thousand Dollars ($5,000).

40. On or about February 22, 1966, defendant Lawrence L. Callanan caused to be issued check No. 647 drawn on the account of the Fund at the City Bank, St. Louis, Missouri, in the amount of One Hundred Dollars ($100).

41. On or about March 1, 1966, defendant Lawrence L. Callanan caused to be issued check No. 660 drawn on the account of the Fund at the City Bank, St. Louis, Missouri, in the amount of Five Thousand Dollars ($5,000).

42. On or about May 5, 1966, defendant Lawrence L. Callanan caused to be issued check No. 727 drawn on the account of the Fund at the City Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

43. On or about June 7, 1966, defendant Lawrence L. Callanan caused to be issued check No. 788 drawn on the

account of the Fund at the City Bank, St. Louis, Missouri, in the amount of Three Thousand Dollars ($3,000).

44. On or about June 23, 1966, defendant Lawrence L. Callanan caused to be issued check No. 110 drawn on the account of the Fund at the Southwest Bank, St. Louis, Missouri, in the amount of Five Thousand Dollars ($5,000).

45. On or about June 27, 1966, defendant Lawrence L. Callanan caused to be issued check No. 116 drawn on the account of the Fund at the Southwest Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

46. On or about July 29, 1966, defendant Lawrence L. Callanan caused to be issued check No. 278 drawn on the account of the Fund at the Southwest Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

47. On or about August 23, 1966, defendant Lawrence L. Callanan caused to be issued check No. 322 drawn on the account of the Fund at the Southwest Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

48. On or about September 30, 1966, defendant Lawrence L. Callanan caused to be issued check No. 215 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Five Hundred Dollars ($1,500).

49. On or about September 30, 1966, defendant Lawrence L. Callanan caused to be issued check No. 216 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

50. On or about September 30, 1966, defendant Lawrence L. Callanan caused to be issued check No. 217 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Five Hundred Dollars ($1,500).

51. On or about October 5, 1966, defendant Lawrence L. Callanan caused to be issued check No. 242 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

52. On or about October 5, 1966, defendant Lawrence L. Callanan caused to be issued check No. 243 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of Two Thousand Dollars ($2,000).

53. On or about October 5, 1966, defendant Lawrence L. Callanan caused to be issued check No. 244 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of Ten Thousand Dollars ($10,000).

54. On or about October 6, 1966, defendant Lawrence L. Callanan caused to be issued check No. 249 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of Two Thousand Dollars ($2,000).

55. On or about October 6, 1966, defendant Lawrence L. Callanan caused to be issued check No. 250 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

56. On or about October 10, 1966, defendant Lawrence L. Callanan caused to be issued check No. 262 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

57. On or about October 19, 1966, defendant Lawrence L. Callanan caused to be issued check No. 286 drawn on the account of the Fund at the American National Bank,

St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

58. On or about October 27, 1966, defendant Lawrence L. Callanan caused to be issued a check No. 314 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Five Hundred Dollars ($1,500).

59. On or about October 27, 1966, defendant Lawrence L. Callanan caused to be issued check No. 315 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Five Hundred Dollars ($1,500).

60. On or about October 27, 1966, defendant Lawrence L. Callanan caused to be issued check No. 314 drawn on the account of the Fund at the American National Bank, St. Louis, Missouri, in the amount of One Thousand Dollars ($1,000).

61. On or about July 14, 1967, defendant Lawrence L. Callanan caused to be issued check No. 447 drawn on the account of the Fund at the Southwest Bank, St. Louis, Missouri, in the amount of Five Thousand Dollars ($5,000).

(In violation of 18 U. S. C. 371)

VERYL L. RIDDLE,
United States Attorney,

EDGAR N. BROWN,
BRIAN O'GCONBOY,
Special Attorneys,
Department of Justice.

A True Bill:

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Foreman.

MOTION TO DISMISS THE INDICTMENT.

(Filed in U. S. District Court July 31, 1968.)

Come the defendants and move the Court for an order dismissing the indictment in the above entitled cause and as grounds for said motion, defendants respectfully state:

1. The indictment is vague, ambiguous, uncertain, indefinite, repugnant and duplicitous and does not constitute a plain, concise and definite statement of the essential facts constituting the alleged offense charged.

2. The indictment fails adequately to inform the defendants of the nature of the charges against them, fails to charge facts sufficient to constitute a violation or offense under the Laws of the United States, and is in violation of the Sixth Amendment of the Constitution of the United States, in that it is insufficient to adequately inform the defendants to enable them to prepare their defense, and to avail them of the defense of prior jeopardy if other proceedings are instituted against them.

3. Section 610, Title 18, U. S. C., as construed and applied, abridges the defendants' rights, as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First and Fifth Amendments of the Constitution of the United States.

4. Section 610, Title 18, U. S. C., as construed and applied, creates an unlawful and arbitrary classification in that it applies only to unions and corporations, and by prohibiting unions from forming parallel political organizations denies unions alone the right of group political activity. Consequently, Section 610 as construed and applied, discriminates against the defendants and all

union members, in violation of the Fifth Amendment of the Constitution of the United States.

5. Section 610, Title 18, U. S. C., as construed and applied, is arbitrary and capricious and deprives the defendants and all union members of liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

6. Section 610, Title 18, U. S. C., as construed and applied, is vague and indefinite and fails to provide a reasonably ascertainable standard of guilt, in violation of the Fifth and Sixth Amendments to the Constitution of the United States.

7. Section 610, Title 18, U. S. C., as construed and applied, invades the rights of the defendants and all union members which are protected by the Ninth and Tenth Amendments to the Constitution of the United States.

8. Section 610, Title 18, U. S. C., as construed and applied, unlawfully abridges the rights of defendants and all union members to choose their Senators and Representatives in Congress, as guaranteed by Article 1, Section 2, and the Seventeenth Amendment to the Constitution of the United States.

9. Although Paragraph 7 of the indictment alleges that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was a Fund of Local 562, it does not allege that the contributions or payments made to said Fund were not wholly voluntary nor that the pipefitters who contributed to said Fund did not do so voluntarily and were not fully aware that the money so contributed would be used for political contributions and expenditures and the other non-union purposes of said Fund. Nowhere in the indictment does the indictment allege that any of the contributions to said Fund were involuntary or that the pipefitters making such contribu-

tions were unaware that the contributions would be expended for political expenditures and contributions.

10. The indictment fails to allege that the contributions and payments to the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund were involuntary or that they were dues, or that the payments to said Fund were necessary for membership in Local 562, or, as to non-member pipefitters employed on jobs within the jurisdiction of Local 562, required and necessary in order for said pipefitters to be so employed.

11. The gist of the indictment is to allege that Section 610, **United States Code**, prohibits labor unions from forming parallel political organizations which receive voluntary contributions from the members of the union to be contributed and expended in Federal elections. Congress intended such political organizations to be legally authorized. Thus, the indictment fails to state an offense; and as so construed and applied, violates the provisions of the United States Constitution as set forth herein above.

12. The allegations of the indictment, on its face, show no violation of the law, in that such allegations affirmatively show that the expenditures and contributions were made by the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund; that said Voluntary Fund was a political organization which raised its funds by direct contribution from individual members of Local 562 and by direct contributions from individual members of other locals, and did not receive, contribute, or expend any funds of Local 562, or any other labor union.

13. The charges alleged in the indictment are barred by laches.

14. The indictment should be dismissed for the reason that the defendants have been denied an opportunity to

defend themselves in that the Government has obtained and retained their records, as alleged in Motion for Return of Records, heretofore filed.

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MOTION FOR BILL OF PARTICULARS.

(Filed in U. S. District Court July 31, 1968.)

In order to protect the defendants against a second prosecution, and to enable them to adequately prepare their defense and avoid surprise at the trial, the defendants, pursuant to Rule 7 (f), Federal Rules of Criminal Procedure, move the court for an order directing the plaintiff to file and serve upon the defendants the following particulars, to wit:

1. With respect to paragraphs 2 through 5 of the indictment, state the offices held by the alleged co-conspirator John F. Burke during the times alleged in the indict-

ment, specifying the period of time that he held each such office. Give the same information with respect to defendant Lawrence L. Callanan, defendant John L. Lawler, defendant George Seaton, and alleged co-conspirator Edward J. Steska.

2. With respect to paragraphs 7, 10 and 17 of the indictment, state whether it is the government's position and theory of the case that the mere fact that the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund was established, maintained, and administered by members, officers, employees, agents, foremen and shop stewarts of Local 562 is, in and of itself, sufficient to make said Fund, under the law, a Fund of Local 562. State whether or not it is the government's position that Section 610, Title 18, U. S. Code, prohibits the members, officers, employees, agents, foremen and shop stewarts of a union from establishing any political organization or fund for the purpose of making contributions and expenditures in connection with elections at which presidential and vice-presidential electors or United States Senators and Representatives to Congress are to be voted for. With further respect to said paragraphs of the indictment, state whether it is the government's position and theory of the case that the alleged "regular and systematic collection, receipt, and expenditures of money obtained from working members of Local 562 and from working members of other labor organizations employed under jurisdiction of the defendant Local 562" were voluntary or involuntary collections and contributions.

3. With respect to paragraph 9 of the indictment, state whether the defendants and co-conspirators alleged therein conspired to have Local 562 make contributions and expenditures, as alleged therein, from the general funds of said Local 562 derived from dues and assessments of members thereof, or whether said defendants and co-conspirators agreed and conspired, as alleged therein, to make

such contributions and expenditures from the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund, as alleged in paragraph 7 of the indictment.

4. With respect to paragraph 10 of the indictment, state the information requested in paragraph 2 above. Further, with respect to paragraph 10 of the indictment, state whether the alleged defendants and co-conspirators concealed the fact that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was making contributions and expenditures in connection with elections at which the presidential and vice-presidential electors, or United States Senators and Representatives to Congress were to be voted for.

5. With respect to paragraph 11 of the indictment, specify the period of time during which defendant John L. Lawler was Director of the Fund and the period of time during which defendant Lawrence L. Callanan was Director of the Fund throughout the period referred to in the indictment. Further, with respect to said paragraph 11, state the person or persons other than the Director of the Fund who allegedly had control and management of the Fund.

6. With respect to paragraph 12 of the indictment, state whether it is the Government's position or contention that the defendants John L. Lawler and Lawrence L. Callanan or anyone else misapplied or embezzled any of the assets of the Fund. Further, with respect to paragraph 12 of the indictment, state whether the members of said Fund were aware of the candidate to which the Fund was making contributions and expenditures in connection with elections at which presidential and vice-presidential electors, or United States Senate and Representatives of Congress were to be voted for. Further, with respect to said paragraph 12 of the indictment, state whether or not said expenditures and contributions were made in accordance

with the wishes of the members of said Fund, or whether such contributions and expenditures were made against the wishes of the members of said Fund.

7. With respect to paragraph 13 of the indictment, state whether the collections "for political purposes" referred to in said paragraph, from members of the Fund, were made voluntarily or involuntarily. Further, with respect to said paragraph, state whether the members of said Fund were aware that the collections referred to therein were to be used and were used for political purposes.

8. With respect to paragraph 14 of the indictment, state whether the provisions of Section 180 of the Constitution of the United Association for the collection of a travel card fee were unlawful under the laws of the United States.

9. With respect to paragraphs 15 and 16 of the indictment, state whether the "agents of the Fund", referred therein, were also members of the Fund.

10. With respect to paragraph 17 of the indictment, state the information which was requested herein above in paragraph 2.

11. With respect to overt Acts, Nos. 1 and 6, state whether or not the orders referred to therein were made for the Fund or for Local 562.

12. With respect to overt Acts Nos. 2, 8, 9, 13, 14, 15, state whether the monies deposited in the bank accounts referred to in each such overt Act were monies of the Fund or of Local 562.

13. With respect to overt Act No. 5, state whether the meeting referred to therein was a meeting of the members of the Fund or of the members of Local 562.

14. With respect to each of overt Acts Nos. 16 through 61, both inclusive, state whether the monies in the account

of the Fund referred to in each of said overt Acts were the monies of the Fund or the monies of Local 562. Further, with respect to each of said overt Acts, state whether said monies so expended by each of said checks came from the general dues and assessments of the members of Local 562 or came from voluntary contributions and collections from the members of the Fund.

15. State whether the Government intends to rely on any overt Acts not specifically so alleged in the indictment. If so, set forth such additional overt Acts.

Respectfully submitted,

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JOINT MEMORANDUM OF DEFENDANTS IN SUPPORT OF THEIR MOTIONS TO DISMISS.

(Filed in U. S. District Court August 5, 1968.)

I.

The indictment fails to state an offense under the laws of the United States.

The indictment in one count charges a conspiracy to violate Section 610, Title 18, United States Code. Section 610 provides in pertinent part:

> It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any (Federal) election * * * or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.
>
> * * * * * * * *
>
> For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The statute also makes it unlawful for any officer of any such labor organization to consent to any such contribution or expenditure by such labor organization.

The history of Section 610 follows. In 1907 Congress outlawed political contributions by corporations (34 Stat. 864). In 1925, this provision was incorporated in the Corrupt Practices Act, where it was broadened, including the

making of the receipt of such contributions an offense (43 Stat. 1070). During World War II, in 1943, its provisions were extended for the duration of the War, by the Smith-Connally Act, to labor unions (57 Stat. 167), because it was felt "that it was unfair to individual union members to permit the union leadership to make contributions from **general union funds** to a political party which the individual member might oppose." (Emphasis added.) (**U. S. v. CIO**, 335 U. S. 106, 115, 68 S. Ct. 1349, and Congressional history there cited.) In 1947, by the Taft-Hartley Act, its provisions were permanently extended to labor unions, and the statute was also extended to cover expenditures in connection with Federal elections. At this time, questions were raised in the Senate in connection with the Conference Report as to what constituted a contribution or expenditure by a labor organization. This legislative history of the statute has been relied on heavily by the Courts in interpreting Section 610. See **United States v. Congress of Industrial Organizations et al.**, 335 U. S. 106, 68 S. Ct. 1349; **United States v. International Union United Automobile, Aircraft and Agricultural Workers of America (UAW-CIO)**, 352 U. S. 567, 77 S. Ct. 529. See also 46 **Marquette L. Rev.** 364 (1963); 40 **Texas L. Rev.** 665 (1952).

This legislative history clearly establishes that labor unions can create political organizations which can make political contributions and expenditures, provided the contributions are made by the members of the union **directly** to the political organization, and are not **general dues** of the union itself. At that time the Political Action Committee of the CIO was already in operation.

Following are excerpts from the Congressional Record of June 5, 1947, of the Senate Debates on the Conference Report of the Taft-Hartley Act:

"Mr. Taft: * * * Such an association (National Association of Manufacturers) could receive money by

direct contributions from individual members, just as the **CIO-PAC can properly operate as a political organization, raising its funds from individual members.** In the same way, the National Manufacturers Association could do the same thing. But no corporation could contribute to the National Manufacturers Association, and no labor union could contribute to the PAC." (93 Cong. Rec. 6438). (Emphasis added.)

* * * * * * * *

"Mr. Taft: * * * As to the association itself, it seems to me the conditions are exactly parallel, both as to corporations and labor organizations. Such an association receiving corporate funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if it got its fund from labor unions, would violate the law. If the labor people should desire to set up a political organization and obtain **direct** contributions for it, there would be nothing unlawful in that. If the National Association of Manufacturers, we will say, wanted to obtain individual contributions for a series of advertisements, and if it, itself, were not a corporation, then, just as in the case of PAC, it could take an active part in a political campaign. But the prohibition is against a labor organization or a corporation participating in an election either by a contribution to somebody else or by direct expenditure of its own funds. That has been understood to be the law of corporations for many years, and until labor organizations were placed under the terms of the Smith-Connally Act, no one supposed that corporations could make direct expenditures without it being considered a contribution. But after the labor organizations were included, that question was raised. In order that it might be finally resolved in this bill, we make it perfectly clear that it covers either a contribution to somebody else or an

expenditure of one's own funds for the same purpose, in connection with an election" (93 Cong. Rec. 6439). (Emphasis added.)

* * * * * * *

"Mr. Magnuson: Mr. President, if the Senator will yield, let me ask him another question. All the funds of labor unions come from dues paid by their members. All the activities of the unions are based upon expenditure of funds provided by dues. That money is in the union's treasury. If the pending bill should become law it would mean that all labor organs which are now in existence would, from now on, be prohibited from participating in a campaign, favoring a candidate, mentioning his name, or endorsing him for public office?

"Mr. Taft: No, I do not think it means that. The union can issue a newspaper, and can charge the members for the newspaper, that is, the members who buy copies of the newspaper, and the union could put such matters in the newspaper if it wants to. The union can separate the payment of dues from the payment for a newspaper if its members are willing to do so, that is, if the members are willing to subscribe to that kind of a newspaper. I presume the members would be willing to do so. A union can publish such **a newspaper, or unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions,** just so long as the members of the union **know** what they are contributing to, and the **dues** which they pay into the union treasury **are not** used for such a purpose.

"Mr. Magnuson: I think all union members know that a part of their dues in these cases go for the publication of some labor organ.

"Mr. Taft: Yes. How fair is it? We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union's members should be forced to contribute, without being asked to do so specifically, and without having a right to withdraw their payments to the election of someone whom they do not favor? Assume the paper favors a Democratic candidate whom they oppose or a Republican candidate whom they oppose. Why should they be forced to contribute money for the election of someone to whose election they are opposed? If they are asked **to contribute directly** to the support of a newspaper or **to the support of a labor political organization**, they know what their money is to be used for and presumably approve it. From such contribution, the organization can spend all the money it wants to with respect to such matters. **But the prohibition is against labor unions using their members' dues for political purposes,** * * * and perhaps in violation of the wishes of many of its (members)" (93 Cong. Rec. 6440). (Emphasis added.)

* * * * * * * *

"Mr. Magnuson: Would the Anti-Saloon League, for example, be prohibited from issuing pamphlets against a political candidate?

"Mr. Taft: As I understand, the league would probably receive contributions from individuals, and it would be like the PAC or any other organization which was organized for political purposes" (93 Cong. Rec. 6440).

The judicial decisions have carefully safeguarded this intent of Congress to permit labor unions and labor people to set up political organizations with direct contributions to it for political expenditures or contributions.

The next year, in **United States v. CIO**, 335 U. S. 106, 110 (1948), the indictment alleged that the CIO News was published by expenditures "**from the funds of the said defendant CIO,**" which news had contained a statement by Phillip Murray, President of the CIO, urging the election of Judge Ed Garmatz to the House of Representatives. The indictment also alleged that defendant Murray "**caused the funds of the said defendant CIO to be expended**" for said purpose (Note 3, p. 110). The United States Supreme Court held that the indictment failed to allege an offense, for one reason that it did not directly "allege the source of the CIO funds" (p. 111), stating that "The funds used may have been obtained from subscriptions of its readers or from portions of CIO membership dues, directly allocated by the members to pay for the 'News' or from other general or special receipts" (335 U. S. at 111).[1] As previously stated, the court noted that the legislative history indicated "that it was unfair to individual union members to permit the union leadership to make contributions from **general union funds** to a political party which the individual member might oppose" (at p. 115) (Emphasis added). The majority quoted at length from Senator Taft's remarks, including the statement that "unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purposes" (335 U. S. at 119). The Court also noted that "Senator Taft stated on the Senate floor that funds voluntarily contributed for election purposes might be used without violating the section" (at p. 123). The four justices' concurring opinion, who thought the statute to be unconstitutional, stated "that in making his responses to

[1] In addition, this expenditure was held not to be an expenditure within the meaning of that word in Section 610.

the numerous and varied inquiries (Senator Taft) tested coverage invariably or nearly so by applying * * * the source of the funds received and expended * * *." It was Senator Taft's "view that the primary purpose of the amendment was 'minority protection', the line drawn by the section was between expenditure of funds received **by the union** expressly for (political) purpose * * * and, on the other hand, expending funds not so limited by the person or source supplying them" (335 U. S. at 137). See further discussion of "minority protection" and "source of the funds used" at 335 U. S. at 146-148.

On authority of this case, the present indictment does not allege an offense. As noted, the indictment in the CIO case alleged that the expenditure came "from the funds of the defendant CIO". This was held to be insufficient. There must be an allegation that the expenditure came from general dues of the union. The teachings of the CIO case have been incorporated in all indictments involving labor unions and labor leaders (save the instant one) which have been returned with respect to Section 610, either for substantive offenses or conspiracy. Each count of the indictment in **United States v. Warehouse and Distribution Workers Union Local 688, et al.**, No. 60 CR 42 (1) and No. 60 CR 189 (1), Consolidated, Eastern District of Missouri, contained the allegation that the "contribution was derived substantially or entirely from the dues payments".

The pertinent allegations of the indictment in **United States v. Automobile Workers (NAW-CIO)**, *supra*, 352 U. S. 567 (1957) which was held sufficient, read as follows:[2]

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[2] See 352 U. S. at 584; "It was further charged that the fund used came from the union's **dues**, was not obtained by voluntary political contributions or subscriptions from members of the union."

"That said expenditure of money mentioned in Paragraph 3 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for telecasts mentioned in Paragraph 3 of this Count was not paid for by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes."

Thus, so the Supreme Court ruled, "the indictment charged appellee with having used **union dues** to sponsor commercial television broadcasts designed to influence the electorate to select candidates for Congress in connection with the 1954 elections" (352 U. S. at 585).

In **United States v. Painters Local Union No. 481**, 2 Cir., 172 F. 2d 854, reversing 79 F. Supp. 516 (1949), "The funds were derived from the general treasury of the defendant Union; the general treasury, in turn, was derived from **dues and fees** paid by members of the Union. * * * (N)o portion of the dues and fees was allocated for any particular account or activity of the Union" (172 F. 2d at 855) (Emphasis added).

In **United States v. Lewis Food Company, Inc.**, 9 Cir., 366 F. 2d 710 (1966) an indictment of a corporation, the indictment omitted to allege that the Corporation made the political expenditure from **general corporate funds**. The Government, however, conceded that it was necessary

to prove that the expenditure came from general corporate funds. 366 F. 2d at 713. With this concession, the Court held the indictment to be sufficient and that the allegation that the Corporation made the expenditure inferred "that general corporate funds were used." The Court further stated that, "It is even questionable whether expenditures from such independent sources (funds contributed by stockholders or otherwise obtained) would be corporate expenditures at all" (366 F. 2d at 713).

The instant indictment contains a more serious defect than the **CIO** indictment. It simply alleges that the Pipefitters Voluntary, Political, etc., Fund "was a fund of defendant Local 562" (Paragraph 7). But it affirmatively alleges that the Voluntary Fund was a "special fund" which had "the appearance of being a wholly independent entity" (Paragraph 10). See also Paragraph 16. Nowhere does the indictment allege that the funds expended or contributed come from general dues. Further, a reading of the indictment as a whole shows that the funds expended did not come from union dues, but were collected separate and apart from the dues' structure of the Local (See Paragraphs 7, 10, 11, 13, 15, 16). Although the indictment alleges that there were regular collections of the contributions to the Voluntary Fund, it does not allege that the payments were involuntary nor that the contributors did not know that their contributions were to be used for political purposes. Indeed, the indictment recognizes that the collections for the Fund were made "for political purposes" (Paragraph 13). This indictment may fairly be construed, we submit, as alleging that it is a violation of Section 610 for officers, agents and members of a union to also act as officers, agents and members of a parallel political organization in the obtaining and expending of direct voluntary contributions for political purposes. There is nothing in the legislative history, judicial

decisions or language of the statute to support such a construction.[3]

Indeed, the judicial decisions have limited the scope of Section 610 far more narrowly than that sought to be applied here. Thus, in the **CIO** case, the indictment was not only found to have failed to allege that the money came from general dues, but also the majority, in avoiding the constitutional issue, interpreted the word "expenditure" in a very limited manner. By a similar narrow interpretation of the word "expenditure", the Second Circuit avoided the Constitutional issue in the **Painters** case. In **United States v. Anchorage Central Labor Council**, 193 F. Supp. 504 (D. Alaska, 1961), the Court found contributions by labor unions to a labor council for political broadcasts to have been voluntary, and not proscribed by Section 610, even though the ultimate source of the money for the political expenditure may have been members' dues. See also the comments in 46 **Marquette L. Rev.** 364 (1963) and 40 **Texas L. Rev.** 665 (1962).

In **United States v. Warehouse and Distribution Workers' Union Local 688**, Nos. 60 CR 42 (1) and 60 CR 189 (1) Consolidated, Eastern District of Missouri, the Local obtained the permission of a part of the members to use part of their general dues for political contributions and expenditures. The indictment contained substantive and conspiracy counts. The late Judge Moore ruled that the statute did not even apply to general dues where the particular members involved had authorized such expenditures, stating "It is my opinion that in the present state of the record there has been no evidence adduced by the Government that the allocations by roughly two-

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[3] An indictment not only must allege all the elements of the offense, but the allegations must also be in clear specific terms, and may not be vague and uncertain. **Russell v. United States**, 369 U. S. 749, 82 S. Ct. 1038; **Van Liow v. United States**, 5 Cir., 321 F. 2d 664.

thirds of the individual members of Local 688—a defendant here—were not entirely voluntary—even though they may have been allocations from general dues paid by such individuals as union members." Judge Moore's ruling gave full effect to the legislative history.

We respectfully submit that the indictment fails to state an offense.

II.

Section 610 as construed and applied in the instant indictment is unconstitutional.

As we have noted, this indictment may fairly be construed as alleging that Section 610 prohibits officers, agents and members of a Union from forming a parallel political organization and utilizing the Union leaders, officers and agents in such political organization, in the obtaining, pooling and expending of direct voluntary contributions for political purposes.

Unless the legislative history of Section 610 and judicial precedents are appraised to permit labor people to pool their financial resources and utilize them for political activity, expenditures and contributions, through the regular leaders of their union, in a separate organization parallel to the union, the statute would clearly be unconstitutional. Section 610 has been saved once only by a narrow construction with four justices believing it to be unconstitutional. **U. S. v. CIO**, supra. On a second occasion, three justices held it to be unconstitutional, with the majority not resolving that issue (**United States v. UAW**, *supra*).

In the **CIO** case, the Supreme Court said (335 U. S. at 120) "it is clear that Congress was keenly aware of the constitutional limitations on legislation and of the danger

of the invalidation by the Courts of any enactment that threatened abridgement of the freedoms of the First Amendment. It did not want to pass any legislatibn that would threaten interferences with the privileges of speech or press or that would undertake to supercede the Constitution. The obligation rests also on this Court in construing Congressional enactment to take care to interpret them as to avoid a danger of unconstitutionality". Although we believe it is clear that Congress intended to authorize parallel political organizations with the same leaders, we note that there is a judicial rule that where a statute is susceptible of two constructions, by one of which constitutional questions arise, and by the other of which constitutional questions are ayoided, the Court's duty is to adopt the latter construction. **Harriman v. Interstate Commerce Commission**, 211 U. S. 407, 422.

Before discussing the statute's violation of the First Amendment, as here applied (by abridging defendant's freedom of speech, of the press, of assembly and of petition for redress of grievances), we note that there is no difference in the constitutional issues as to political **contributions** or **expenditures.** The word "expenditure" was added to the statute in 1947 because it was felt that the prohibition against contributions was not broad enough to prohibit political expenditures, so that indirect contributions in the guise of expenditures could be made without violating the statute. **U. S. v. CIO,** *supra*, at 115. As Senator Taft said in the Senate debates (93 Cong. Rec. 6439) "all we are doing here is plugging up the hole which developed". A blanket prohibition against contributions would equally violate the First Amendment as a blanket prohibition against expenditures. Whether a contribution is given directly to a candidate to be used to publicize his views or an expenditure is made in order that he may do the same thing, freedom of speech is abrdiged by the statute. The organization which actu-

ally pays for hiring the hall, the billboards or the radio time has little effect upon abridgement of First Amendment freedom. It is the source of the funds which is significant.

Freedom of political expression through association is recognized as one of the fundamental liberties of the First Amendment. **New York Times v. Sullivan**, 376 U. S. 254, 269-270; **N. A. A. C. P. v. Button**, 371 U. S. 415; **Watkins v. United States**, 354 U. S. 178; **N. A. A. C. P. v. Alabama**, 357 U. S. 449. Although First Amendment rights are not absolute, they enjoy a preferred status in our Constitutional scheme. **Sherbert v. Verner**, 374 U. S. 398; **Lamont v. Postmaster General**, 381 U. S. 301; **United States v. Carolene Products Co.**, 304 U. S. 144; **Thomas v. Collins**, 323 U. S. 516; **Thornhill v. Alabama**, 310 U. S. 38; **New York Times v. Sullivan**, 376 U. S. 254, 270.

Within the realities of modern politics, the right to expend and contribute is a part of freedom of speech, press, assembly, and petition for redress of grievances. "Unions can act and speak today only by spending money, as indeed is true of nearly every organization and even of individuals if their action is to be effective". **United States v. CIO**, 335 U. S. at 146, **N. A. A. C. P. v. Button**, *supra*. The right to expend and contribute are essential to the exercise of First Amendment freedoms. In terms of the cost of television and radio time and newspaper advertisements, the freedom to speak and to print without the right to provide funds is an empty one. Similarly, the freedom to assemble is void if there is denied the right to spend monies for a hall, or a rally, or to get out the vote, or distribute handbills or other campaign literature. The right to petition the Government for a redress of grievances by removing from elected office those responsible for one's grievances is useless if, in these modern times of radio and television, funds cannot be spent to air a par-

ticular candidate's espousal of or opposition to the grievances. Indeed, Section 610 as interpreted by the prosecution would prevent members of labor unions from giving and pooling money to defeat candidates pledged to enact a Federal right-to-work law. As a matter of fact, Section 610 would itself become a self-perpetuating grievance because it would deny the right to the aggrieved to speak effectively against it.

Furthermore, Section 610, so interpreted, denies the individual members of local unions the right of voluntary association. **N. A. A. C. P. v. Button**, *supra*. These individuals form and join labor unions for legitimate collective interests. Through their union they seek to increase the effectiveness of their individual participation. Political activity is necessary to improve and maintain their bargaining position and to progress further along economic and social lines. The same reasons for collective bargaining also dictate collective political representation. If labor people are denied the right to associate voluntarily for political action **through their chosen leaders**, they are effectively denied the right of collective representation and association in economic matters. Political activity is necessary to obtain and retain the right to engage in collective representation and association in economic matters in order to bargain on even terms. Labor leaders must be politically active in order to accomplish through legislation these objectives which collective bargaining cannot yield, such as higher minimum wages, reasonable maximum hours, restraints on child labor, increased public education, greater social insurance, adequate housing, and effective anti-depression measures. **Reynolds, Labor Economics and Labor Relations** (1959). The support of Federal candidates favorable to unions, laboring men, and their program is an essential right of labor people so that gains won by labor at the bargaining table shall not be lost in Congress. Collective political

action is essential to their common interests. Under the Government's interpretation of Section 610, labor people would be denied any meaningful collective political action, for they would be prohibited from making political contribution in co-ordination with their union leaders and union aims. Thus, the member's freedom of political association is substantially and unconstitutionally diminished. **U. S. v. C. I. O.**, *supra* (concurring opinion); **U. S. v. U. A. W.**, *supra* (dissenting opinion).

Since the union itself is prohibited from spending general dues for political purposes, political expression and association in parallel organizations with the same leaders is necessary if members of unions are to be permitted any effective political expression at all. Because the First Amendment precludes any abridgement of the full and free exercise of the right to speak (as well as its absolute prohibition) **(Lamont v. Postmaster General**, 381 U.S. 301, 305; **Grosjean v. American Press Co.**, 297 U. S. 233, 249-251; **Thomas v. Collins**, 323 U. S. 516, 538-540; **Hague v. CIO**, 307 U. S. 496), a reading of Section 610 to prohibit voluntary collective political activity must result in unconstitutionality.

The Government's interpretation of the statute would give it too broad a sweep to meet the relevant evil, namely to avoid the use of a member's involuntary dues in aid of a candidate which he does not support. **Butler v. Michigan**, 352 U.S. 380. Indeed, even as written, the vagueness and uncertainty of Section 610 has been recognized in every case which has considered it. In **U. S. v. CIO**, *supra*, "expenditures" was belabored and limited. In **United States v. Construction Workers Local 264**, 101 F. Supp. 869 (W. D. Mo., 1951) the District Judge in order to avoid the constitutional issues, found the expenditures by the Union to be too small and too indefinite to come within the statute. In United States v. Painters Local 481, 172 F. 2d 854, the Second Circuit also avoiding the

constitutional issues, emphasized not only the smallness but also the voluntariness of the direct political expenditures by pointing out that the expenditures (by the union itself from general dues) had been authorized by a majority of the union members at a special union meeting. In addition, the Statute's legislative history and treatment by the Supreme Court in both the **C. I. O.** case and **U. A. W.** case indicate that the source of the funds determine criminal conduct thereunder. Indeed, it has been held that large political contributions and expenditures from general dues by a labor union are not prohibited by Section 610 where voluntariness is involved. **U. S. v. Local 688**, *supra*.

The Government's construction of Section 610 would leave labor people, and unions, including these defendants, with no clear definition of their rights to participate in Federal election. They would have no opportunity to make themselves heard for or against particular federal candidates except by running the risk of prosecution under Section 610. If the outer limits of the statute are to be found vaguely somewhere beyond its literal terms, an effective previous restraint would be imposed upon the exercise of First Amendment rights which is really outside the purview of the statute. See **Thomas v. Collins**, 323 U. S. 516, 535.

In words particularly appropriate to the instant statute the Court, in **Smith v. California**, 361 U. S. 147, 151, said:

> "It has been stated here that the usual doctrine as to the separability of constitutional and unconstitutional applications of statutes may not apply where their effect is to leave standing a statute patently capable of many unconstitutional applications, threatening those who validly exercise their rights of free expression with the expenses and inconvenience of criminal prosecution. * * * And this Court has intimated that

> stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser."

Thus interpreted, the statute's vagueness furnishes an independent basis for invalidating it under the due process clause of the Fifth Amendment. As a criminal statute, it fails to provide a reasonably ascertainable standard of guilt. **Connally v. General Construction Co.**, 269 U. S. 383, 391: It is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." See also **Lanzetta v. New Jersey**, 306 U. S. 451, 453. It neither gives notice to the individual as to the standards of conduct which he must follow nor an adequate guide to the prosecutor in enforcing the law. Indeed, as we have noted, in other cases the Government has interpreted the statute differently. In its brief filed in the case of **United States v. UAW**, *supra*, the Government conceded because of the statutory history, that there were a number of "random exceptions" falling outside the ambit of Section 610, such as funds from voluntary contributions (Brief p. 39) and funds spent for regular union newspapers (Brief p. 51).

In other cases the Government has (sometimes despite the express wording of the statute) recognized the Congressional intent to except these categories. Certainly, as we have shown, Congress intended to except the practice alleged in the instant indictment. If Section 610 means something more than its express terms, as here contended by the Government, we submit that there are no standards to guide labor unions and their officers and labor people in determining what to do.

Section 610 being criminal, should be construed narrowly. So construed, we again submit that the Volun-

tary Fund, even if it were in fact a Fund of Local 562 financed by voluntary contributions, would not be in violation of Section 610, both on reason and authority. To expand the language of Section 610 to make the Voluntary Fund a violation is not only to flout the prior process of exclusion from Section 610 by the Courts in individual cases, but also really to overturn opinions in five decided cases as well as to ignore the legislative history and the Government's own prior concessions.

Due process considerations do not end with the potential defendants. They must look to see whether or not adequate prosecutive guides in enforcing the law have been established; whether or not the law is discriminatory in operation; and whether or not the law provides an opportunity for discrimination in enforcement. **Yick Wo v. Hopkins**, 118 U. S. 356, 373-374.

In the latter connection, it should be noted that there has been only one indictment of a corporation or corporation officer under Section 610. Yet, we believe, it is common knowledge that the suggestion made by the writer in the December 1957 issue of the **Washington University Law Quarterly** has been taken seriously by corporate entities. This suggestion, found at footnote 54, p. 406, is that if unions or corporations wish to circumvent Section 610, there is nothing to prevent them from paying their officers higher salaries with the understanding that the extra money will be individually contributed by each such officer toward political activities which will benefit his employer. **Of course, labor people and labor unions cannot in reality do as corporations are doing, and their only hope of effective political action is to form parallel voluntary political organizations as was done here.**

As the Government has here interpreted Section 610, the defendant's constitutional rights under the due process clause of the Fifth Amendment are also violated. Sec-

tion 610 becomes a special, discriminatory, and arbitrary exertion of legislative power directed mostly, if not solely, against the effective political expression of organized working men. Section 610 is the only instance where Congress has ever sought to prohibit associations of individuals formed to promote common interests, from expending funds or making contributions in Federal elections. Businesses and unincorporated associations of businessmen whose interests are adverse to organized labor are not covered by the statute and can expend and contribute in Federal elections. Only unions among all the many kinds of unincorporated associations are singled out for this prohibition. But "the right either of workmen or of unions . . . to assemble and discuss their own affairs is as fully protected by the constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." **Thomas v. Collins**, 323 U. S. 516, 539.

Due process forbids special, arbitrary or discriminatory Federal legislation. **Yick Wo v. Hopkins**, supra; **Nichols v. Coolidge**, 274 U. S. 531, 542; **United States v. Kahriger**, 345 U. S. 22, 33-34. The obvious effect of Section 610 thus interpreted is to weaken the political strength of labor unions in Federal elections by muting their political voice, and conversely to increase the effectiveness of anti-labor associations by leaving them free to spend as they choose.

It is no answer to argue that the discrimination against labor unions is not arbitrary because corporations are similarly prohibited. **For there is no indication that the Government will take the position that all unincorporated businesses, employers and their management, and business associations,** which represent the counterpart to labor unions, are prescribed by Section 610. The corporate entity alone is not the only natural antagonist of

labor in the political arena. Other forms of business proprietorships, left unrestrained, are also the opponents of labor unions. If we assume that the interests of employers are traditionally opposed to the interests of labor organizations, we find in the omission of non-corporate employers and business and trade associations an arbitrary discrimination in favor of the anti-labor interests. A statute which seeks to force unions and labor people entirely out of political activity, while permitting to their counterparts a countervailing political activity, denies due process individually and collectively to unions and their members.

We respectfully submit that Section 610 as construed and applied in the instant indictment is unconstitutional and that the indictment should be dismissed.

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GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS ITS INDICTMENT.

(Filed in U. S. District Court August 9, 1968.)

Defendants move to dismiss this indictment on the ground that it does not state an offense and on the ground that Section 610 of Title 18, United States Code, is unconstitutional.

I.

The indictment states an offense.

1. Defendants contend that this indictment is defective because it does not specifically allege that the funds contributed came from the general funds of defendant Local 562. Paragraph 9 of the indictment charges that the defendants

> "unlawfully, wilfully and knowingly did conspire and agree with each other and with divers other persons to the Grand Jury unknown, to violate Section 610 of Title 18, United States Code . . ."

The Government contends that the above language sufficiently charges a violation of law and that it fully informs the defendants of the nature of the charge against them.

Under this pleading the Government is entitled to prove that the defendants conspired to make contributions or expenditures from the general funds of Local 562 in connection with the election of Federal candidates. The point is settled in **United States v. Lewis Food Co.**, 366 F. 2d 710 (9th Cir. 1966). This case involved prosecution of a corporation for making an expenditure in violation of Section 610. It was there, as here, contended that the indictment failed to state an offense under the statute

because it did not allege that general funds of the corporation had been used:

> "In our opinion, the allegations in the indictment that the corporation made an 'expenditure' for the stated purpose, necessarily infers an allegation that general corporate funds were used. Corporate expenditures normally come from a corporation's general funds and not from some independent fund contributed by shareholders, or otherwise obtained. It is even questionable whether expenditures from such independent sources would be corporate expenditures at all. . . . **With respect to the use of general corporate funds this indictment meets these requirements** [that it contains a plain, concise and definite statement of the facts constituting the offense charged]. **Entry of the plea of not guilty, therefore, gave rise to a question of fact as to the source of the corporate funds.**" (*Supra*, p. 713, emphasis added.)

Defendants rely upon **United States v. C. I. O.**, 335 U. S. 106, in which an indictment under the statute was dismissed. However, the reason the Court dismissed the indictment was not that it failed to allege that the funds used to publish a newspaper were derived from the general funds of the union. The Court held that even if such funds came from the general funds of the union, Section 610 did not extend to an expenditure for publishing a union newspaper distributed to its membership:

> "It is our conclusion that **this indictment charges only that the CIO and its president published with union funds** a regular periodical for the furtherance of its aims, that President Murray authorized the use of those funds for distribution of this issue in regular course to those accustomed to receive copies of the periodical and that the issue with the statement described at the beginning of this opinion vio-

lated Section 313 of the Corrupt Practices Act." (*Supra*, p. 123, emphasis added.)

2. Defendants further allege that the indictment is defective in that it does not allege that the funds involved were not voluntary. As indicated above, the Government is entitled to prove, and admittedly must prove, that the funds here involved were general funds of Local 562.

Proof of the offense charged here does not depend upon whether the funds were volunteered or not by union members. The issue is whether these funds were the general funds of Local 562. Shareholders cannot, for example, consent or volunteer to have a corporation make contributions or expenditures in connection with Federal elections. This is the holding in **United States v. Lewis Food Co.**, *supra*.

> "The Supreme Court stated that the other legislative motivation for enactment of legislation such as section 610 was the necessity for destroying the influence over elections which corporations exercised through financial contributions. 335 U. S. at 113, 68 S. Ct. at 1353. **This consideration would be meaningless if a corporation could make expenditures for activities otherwise forbidden by section 610 by simply obtaining unanimous consent of its shareholders.** In the Auto Workers case, the indictment contained no allegation that the expenditure of union funds was contrary to the wish of members. Nevertheless, the Supreme Court found the indictment sufficient." (Emphasis added.)

The same is, of course, true of labor organizations. Accordingly, it is not necessary for the Government to allege that the funds involved were or were not contributed voluntarily.

II.

Section 610 of Title 18, United States Code, does not, as applied in this indictment, violate the United States Constitution.

1. Defendants contend that section 610 offends the First and Fifth Amendments protecting rights of speech, press, assembly, and petition. Defendants cite **United States v. C. I. O.**, 335 U. S. 106 and **United States v. Auto Workers**, 352 U. S. 567.

The Government contends that this case does not involve First Amendment issues. Unlike the cases cited by defendants, this case concerns "contributions" as distinct from "expenditures". The Government, as indicated in the checks set out in the overt acts, is concerned here only with contributions. The mere transfer of money admittedly has an effect upon speech and its communication. The impact upon free speech of "contributions", however, is wholly different from the impact upon speech of "expenditures" for publication of a newspaper (**C. I. O.** case), for sponsorship of a political television broadcast (**U. A. W.** case), or advertising in a large number of newspapers (**Lewis Food Co.** case).

It is possible to confuse two different issues; one issue is whether Congress, consistent with the First Amendment, may extend the prohibition of section 610 to include labor organizations; the other is whether a particular "expenditure" includes activities that are protected by the First Amendment. The Government contends that this case involves the statute in the area of its narrowest application. In **United States v. United States Brewers' Ass'n.**, 239 F. 163 (W. D. Pa. 1916), application of the statute to contributions by corporations was upheld against objections that it trenched upon First Amendment rights.

The Government's position on this point is fortified in the U. A. W. case. Here the dissenting Justices, in a footnote to their opinion, indicate that Congress can, as it has done under the statute, prohibit "contributions". They concluded that "expenditures" could be regulated by requiring those who made expenditures to disclose their connection with such expenditures.

For the foregoing reasons the Government respectfully submits that the Court should deny Defendants' Motion to Dismiss.

VERYL L. RIDDLE,
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ROGER EDGAR,
Assistant United States Attorney,

EDGAR N. BROWN,
Special Attorney,
Department of Justice.

ORDER.

(Filed in U. S. District Court August 14, 1968.)

This matter is before the Court on motion of defendants to dismiss the indictment.

The Court having fully considered the matter, It Is Hereby Ordered that said motion be and it is hereby overruled.

Dated this 14th day of August, 1968.

/s/ JOHN K. REGAN,
United States District Judge.

ORDER.

(Filed in U. S. District Court August 14, 1968.)

This matter is before the Court on motion of defendants for a bill of particulars.

The Court having fully considered the matter, It Is Hereby Ordered that said motion be and it is hereby overruled.

Dated this 14th day of August, 1968.

/s/ JOHN K. REGAN,
United States District Judge.

[*178] **TRANSCRIPT OF PROCEEDINGS.**

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GOVERNMENT'S EVIDENCE.

PATRICIA STIEFERMAN,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Ma'am, would you state your full name for the Court and jury, please? A. Patricia Stieferman.

Q. Stiefelman is it pronounced? A. Stieferman.

Q. Stieferman. And Mrs. Stieferman, is it? A. Yes.

Q. Mrs. Stieferman, throughout your testimony will you speak up so all members of the jury panel, including the two [179] gentlemen who are in the alternate seats over here, can hear you? A. Yes, sir.

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* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

Q. So that all the gentlemen on the other side here can hear you. What is your present address? A. 10823 Vorhof Drive.

Q. In St. Louis?, A. St. Louis, Missouri.

Q. All right. For whom are you presently employed? A. Pipefitters Welfare Educational Fund.

Q. And at what address? A. 1242 Pierce Avenue.

Q. 1242 Pierce Avenue. Just for clarification, what section, generally, in town is Pierce Avenue located? A. It is south St. Louis, off of Hampton and West Park.

Q. Off of Hampton and West what? A. West Park.

Q. West Park? A. Yes.

Q. That would be in the area generally south of the hockey arena? A. Yes.

Q. All right. And how long have you been employed, as I recall, you said for the Welfare Fund? [180] A. Yes, sir.

Q. For Local 562? A. Yes, sir.

Q. How long have you been employed by the Welfare? A. Since 1964.

Q. Since 19 and 64. Do you recall the month? A. I believe it was April; March or April.

Q. What are your duties there, in a general way? A. I do general office work; bookkeeping.

Q. Are you a bookkeeper? A. I do; yes, sir.

Q. All right. How old are you, Mrs. Stieferman? A. Thirty-eight years old.

Q. Now, who is your immediate supervisor in your employment there at the Welfare Fund? A. Mr. Edward Henry.

Q. Mr. Edward Henry. Do you know what title or position he holds with Local 562? A. He's with the Welfare Department, and he's the director of the Welfare.

Q. Director of the Welfare Department? A. Yes.

Q. Has he been your supervisor throughout the time of your employment for the Welfare Fund? [181] A. Yes, sir.

Q. Now, in performing your duties in that department, do you make entries showing the amount collected into the Welfare Fund? A. Yes, sir.

Q. And enter them on ledger sheets and the various records of the fund? A. Yes, sir.

Q. Now, do you receive money? A. Checks from the contractors.

Q. Checks from the contractors? A. Yes, sir.

Q. Now, can you tell the Court and jury how often you receive these checks? A. Well, the contractors generally pay once a week. It is a fringe benefit, and they pay per man. They list the men and the number of hours and the amount that they are paying.

Q. All right. A. And they send one check in for all the men working for them.

Q. All right. So on this sheet, as I understand your testimony, there would be a list of all the members of 562 working for that contractor? A. All pipefitters working for that contractor.

[182] Q. Yes. And have their names on it? A. Yes, sir.

Q. And what other information does this sheet have? A. Social Security numbers.

Q. All right. A. And the total hours they are paying for; total hours they worked.

Q. The total hours they worked during the week? A. Week.

Q. All right. And then does it have another column? A. Yes. The amount of money.

Q. The amount of money? A. That they are paying for, for this man.

Q. That the contractor is paying into the Welfare Fund for each person? A. Yes, sir.

Q. All right. Now then, does it have a column which shows the gross pay for each man for that work period? A. No, it does not.

Q. Does it have the number of hours he worked? A. Yes, sir.

Q. Ma'am, does it have the rate of pay, that is, so much, the rate per hour that—— A. Foreman's pay?

[183] Q. Yes. A. No.

Q. All right. Now, this comes in to you on a sheet or a form? A. Yes, sir.

Q. And with that do you receive a check? A. Yes, sir.

Q. And the check you receive is in what amount? A. The total amount.

Q. In other words, you have a column of figures on one side of the sheet? A. Yes, sir.

Q. And at the bottom they will be totaled? A. Yes, sir.

Q. And the check you get is in the amount of that total? A. Yes, sir.

Q. After you receive that check, what do you do with it? A. Well, it is deposited daily into the bank. We break it down by funds, deposit so much into each fund per hour. We have an accounting machine which does this, and then we post it to the contractor's statement, showing how much he's paid all year, and then we post it to a card for each individual man, showing the total hours that he's worked, and the total hours for the year.

[184] Q. Now, who makes these bank deposits? A. They are done by mail.

Q. By mail? A. Um hmm.

Q. Have you used more than one bank during the period of time you have been in this position? A. No, sir.

Q. Just one bank? A. Yes, sir.

Q. What is the name of that bank? A. Jefferson Bank.

Q. All right. Now, do you have any other responsibilities in connection with your job in the Welfare Department or Fund? A. That would be generally what I do. We have several girls that help out on this. Myself, that is the majority of things that I do.

Q. Now, the place where you work, is that what is generally referred to as the hall? A. That would be downstairs.

Q. All right. A. Our office has a whole floor upstairs, and that's the welfare office.

Q. Is the building at this address, at 1242 Pierce Avenue, [185] is that a single building? A. Yes, sir.

Q. Is it multi-storied? A. Yes, sir.

Q. How many stories are in it? A. Two.

Q. That's the ground floor and one story upstairs? A. Yes, sir.

Q. Now, I was asking you about the hall, and you said that the hall was downstairs? A. Yes, sir.

Q. Now, the hall occupies then the main floor of this building? A. Yes, sir.

Q. All right. Is there anything else on the main floor, other than the hall? A. The union office, I believe, is what you mean by the hall?

Q. Yes. A. And there's also an office for the Voluntary Fund.

Q. All right. On the main floor? A. Yes, sir.

Q. Well, now, could you describe what is on this main floor, for the jury and for the Court, please? [186] A. You mean the number of offices?

Q. Yes, the number of rooms, and approximately their size? A. Well, there are two rooms to the left of the building that are the Voluntary Fund offices; two offices there. And then on the right of the building is three

offices for the Union, one large room and then two smaller offices off to the side.

Q. All right. So there are four separate rooms or offices, two on one side and two on the other?

The Court: Five.

The Witness: There's one large room of a union hall, and then two separate offices off of those, that one large room, and then on the other side of the hall there are two connecting offices for the Voluntary Fund.

Q. (By Mr. Riddle) All right. Does the hall itself, is it a much larger place than the others, that is? A. Well, the welfare office is the largest, but on the first floor, yes, the union hall is the largest office.

Q. Is this union hall, is that used for meetings of members? A. No, sir, I don't believe it is.

Q. All right. What's it used for? A. Well, the business agents work from there. The [187] secretary and treasurer has an office, and the business manager has an office.

Q. I see. Now, where are the meetings held? Do you know that? Of the members? A. At a different hall, but I don't——.

Q. Not in this building? A. Not in this building.

Q. All right. Now then, your job which—you are presently on the second floor. I believe you mentioned there were some other people working there for you, or with you? A. Yes.

Q. How many others? A. There are three regular girls that work, and we have occasionally another girl that comes in and helps.

Q. Ma'am, prior to March or April of 19 and 64, where did you work? A. I worked for the Pipefitters Voluntary Fund.

Q. All right. And at what address? A. 1242 Pierce Avenue.

Q. In the same building? A. Yes, sir.

Q. On a different floor? A. Well, at that time the Voluntary Fund was on the second floor where the welfare office is now, and that was [188] the only office that was up there.

Q. All right. Ma'am, when did you begin working for what you call the Voluntary Fund? Pipefitters Voluntary Fund? A. January of 1963.

Q. You say in January of '63. Do you remember the day of January? A. I believe it was the first week in January.

Q. The first week in January? A. Yes, sir.

Q. Now, who employed you? A. John L. Lawler.

Q. What kind of work had you been doing prior to that time? A. I had not worked for ten years. I was married, and have three children, and I was starting back to work at that time.

Q. All right. Ma'am, when Mr. Lawler hired you, were you given any instructions as to what your duties were? A. Yes, sir. We were going to open up this office for the Pipefitters Voluntary Fund, and I was to do the clerical work, answer the telephones and accept money from the people that paid into the Voluntary Fund, and keep, prepare the bank statements, or the bank deposits, and check out the bank statements, reconcile the bank statements at the end of the month.

[189] Q. All right. Now, were you given any forms, or literature, or cards to work with? A. Well, for the office itself, we were having a card system to keep the record by members. We had a machine, 3100 machine from the National Cash Register Company.

Q. You call it a 3100 machine? A. Yes, sir.

Q. All right. What else did you have? A. Typewriter and desks, and just a general office equipment; adding machine, comptometer.

Q. Adding machine and comptometer? A. Yes, sir.

Q. All right. Was anybody assigned to work with you in that office? A. No, sir. I worked there alone.

Q. And I believe, if I recall your testimony correctly, that was on the second floor? A. Yes, sir, at that time.

Q. The same office that you are working in now? A. Well, it was just a small office. There was no one else up there, and they opened up just a small office for myself up there.

Q. All right. Now, in connection with your duties, did you collect money? [190] A. Yes, sir.

Q. And beginning when? A. January of 1963.

Q. What about the first week that you were on duty? Did you collect any money that week? A. Yes, sir.

Q. All right. Now, from whom did you collect this money? A. From the men that were contributing to the Voluntary Fund.

Q. All right. How was the money delivered to you? A. In different ways. Some of it was mailed in. Sometimes men would come in and pay individually, and sometimes men would come in and pay for a group of men that worked together on a job.

Q. Now, you say that you got the money then from these sources, one by the mail? A. Yes, sir.

Q. And one by individuals just coming in? A. Yes, sir.

Q. And, three, by people coming in from off the job who had collected from other people? A. Yes, sir.

Q. Now, let's talk about the money that came in from off the jobs. [191] A. Yes, sir.

Q. They were collected by one person that brought it in to you. Let's talk about that first.

Ma'am, was this money delivered to you—I am talking now about the first week, along about that time—was it

delivered to you in check or in cash? A. It would be cash and some checks.

Q. Could you give the jury or Court an estimation about what percentage of the total would be checks and what percentage of the total would be cash? A. Well, it would be mostly in cash, and a small percentage would be in checks.

Q. A small per cent? You mean one per cent? A. Different on different jobs, but I suppose about 5 per cent, or something like that.

Q. Would be checks, and 95 per cent would be cash? A. Yes, sir.

Q. All right. Now, with the cash that was brought in, was anything else given to you? A. Yes, sir. They would list, they had sheets, and they would list the man's name and the amount that he was paying, and sometimes they would have the hours on that they had worked for that week, or for whatever period of time they were collecting for.

[192] Q. So with the cash there was a sheet? A. Yes, sir.

Mr. Randall: Your Honor, I am going to object to this procedure of Mr. Riddle of repeating again the answer of the witness.

The Court: It will be overruled. He may proceed. Go ahead.

Q. (By Mr. Riddle) Ma'am, with respect to the sheet we are talking about, can you describe how the sheet and money was delivered to you? A. The man's name was listed, and the amount of money, and then a total of the amount of money, usually.

Q. All right. Well, was the sheet wrapped around the money, or the money separate from the sheet? A. Well, it was usually together, you know, wrapped together.

Q. Now, calling your attention to this sheet, would you describe it as best you can remember what was across the top of it? A. I believe it said, "Pipefitters Voluntary Fund."

Q. All right. A. Either job name, or contractor's name, I forget which, but I think it said job name, foreman's name, date, a line for a date, and then just lines where they could fill in the names [193] and the amounts of money. The name column, the total hours—maybe, no, I just think it was a column where they put hours in, and at the bottom was the total.

Q. On the left-hand column then would be the list of the names? A. Yes, sir.

Q. And these names would be the names of members of 562, or out-of-towners? A. Yes, sir.

Mr. Randall: The sheets themselves are the best evidence. We have the sheets here.

The Court: Well, she can tell about it. I assume that the sheets are going to be marked.

Mr. Riddle: They will be referred to, Your Honor.

The Court: All right.

Q. (By Mr. Riddle) And what was on the next column after the names? A. Well, I believe it was the hours.

Q. The hours worked? A. Worked.

Q. For a period? A. Yes, sir.

Q. All right. Now, do you recall what period of time each sheet covered? What work period? A week, month, or—— [194] A. Week. But they would pay by different amounts. I mean sometimes it would be for a week, sometimes they would be paying for a month, or, you know, they would just write it in if it were for more than that. It wasn't always done exactly the same way.

Q. All right. Now, after the amount of worked hours, I suppose it had eight, eight, six or ten, figures like that across? A. Some of them would, and some of them would just have the total, like 40 hours a week if it were for a week, or whatever; 32 hours, or 16 hours, or that type.

Q. All right. So that would be the second column. Then what would be the third or last column over on the right-hand side of this sheet? A. That would be the amount of money that was paid.

Q. The amount of money that was paid? A. Um hum.

Q. All right. Now, at that time, in January of 19 and 63, what amount of money was paid for a 40-hour week, that is, the amount that would appear in the right-hand column for members of 562? A. For members, it was a dollar a day.

Q. So for five days, it would be five dollars? A. Yes, sir.

[195] Q. All right. Now, what was the amount paid and showing up in that right-hand column for what we call out-of-towners? A. That was two dollars a day.

Q. And then if they worked 40 hours, the amount appearing over in the right-hand column would be ten dollars? A. Yes, sir.

Q. Ma'am, was there any designation on this check, or check sheet we are talking about to show whether the person was a member of 562 or of another local? A. This varied. Sometimes there were. Sometimes they would mark down member, you know, 562, or maybe they would put out of town, or sometimes they would put a local number, but everyone seemed to do it differently. It was, you know, no set way that they did it. Sometimes it had nothing on it.

Q. Now, in instances where it had nothing on it, did you make a determination whether the given name, we'll say it is John Jones, whether he was a member of Local

562 or an out-of-towner? A. Well, the amount of money would be different if he was an out-of-towner.

Q. So if you ran down the right-hand column and you saw five dollars, five dollars, five dollars, and then ten dollars, and then five dollars, you know the ten dollars was an out-of-towner? [196] A. That's right.

Q. Is the term or phrase "out-of-towner" familiar to you? A. Yes, sir.

Q. Do you know what I mean—or what is your understanding of that phrase? A. Well, I believe, to me it just means anyone that is not particularly a member, that is not a member of 562. It doesn't necessarily mean they are from out of town.

Q. I see. But out-of-towner is that phrase used to describe non-members rather than where they geographically reside? A. That's what I understand it to be.

Q. All right. Ma'am, again referring to this sheet, or this document that came in, what did you call it? A. Contribution sheet.

Q. Are you familiar with the term "checkoff sheet"? A. Yes, sir. But that did not apply to this office.

Q. What is a checkoff sheet in your—— A. Well, that's for the local union. This is where the dues and assessments are paid by the contractor, or deducted from the man's check and paid into the union.

Q. Now, on this sheet we are talking about that was used for these collections and for the delivery of the monies to [197] you, you mentioned that there was at the top of the form an indication of the foreman on the job? A. Yes, it was printed in there, "Foreman".

Q. Now, from your recollection, the person who made the collections and brought them into your office, were they usually and normally the foremen on the job? A. Well, I never did know, you knew, whether they were the foremen, or just who they were. Sometimes they

would put down the name of the foreman there, but that wasn't necessarily the man who brought it in, and so I never did really know who—I wouldn't know who the foreman was on the job, or who, you know. So I would have no idea.

Q. All right. So on a given time—still talking about in January of 1963—this foreman, or some man, would come into your office? A. Um hmm.

Q. And he would have this sheet and money together? A. Yes, sir.

Q. And he gave it to you? A. Yes, sir.

Q. All right. Now then, tell the Court and jury what you did with it after you received it. A. While the man was there, if he was there, if he gave it to me, then I would check to see that the addition was [198] correct and the amount of money was correct that he was turning in.

Q. In other words, you would check his—— A. Figures.

Q. ——figures? A. Yes, sir.

Q. To see if the total on the extreme right-hand column came to the same figures as the amount of cash he was giving you? A. Yes, sir.

Q. All right. Now, would you give him a receipt? A. No, sir. If he asked for one, I would, but mostly they didn't.

Q. Now, after you did this calculation then what did you do with the sheet and the money? A. Well, the money —are you talking about at the end of the day or——

Q. Yes. A. Well, I would prepare, if they were going to make a bank deposit that day, I would prepare the bank deposit for them, for the checks or whatever was going to be deposited. With the sheets, I would prepare them to post to the cards of the men.

Q. All right. Now, about the cash. Did you make out the bank deposits for cash? [199] A. In '63, in January

of '63, they were not putting cash into the checking account that they had. The checks that they had, I prepared those for the bank, and the cash was not put into the bank at that time.

Q. All right. So you made a segregation of the money when it came in to you? A. Yes, sir.

Q. And in one stack you had checks? A. That's right.

Q. Another stack you have cash? A. That's right.

Q. And if I recall your testimony, the checks you would make out a bank deposit slip for? A. Yes, sir.

Q. And then what would you do with it after you made out the bank deposit slip? A. Well, I would give it to someone—I never made the bank deposits myself, so I would give it to whoever was going to make the bank deposits.

Q. In January of '63, who was making the bank deposits, if you know? A. Mr. Seaton.

Q. Mr. George Seaton? A. Yes, sir.

[200] Q. Is this the gentleman sitting at the table here? A. Yes, sir.

Q. Mr. Seaton is sitting at the end of the table, has his hands on his chin? A. Yes, sir.

(Defendant Seaton stood.)

Q. (By Mr. Riddle) Now then, with respect to the cash, tell the Court and jury what you did with it. A. Counted it and made a total, and put it in an envelope and gave it to Mr. Seaton.

Q. Mr. Seaton? A. Yes, sir.

Q. All right. Now,——— A. May I say that this generally is what I did, but there were times when George, Mr. Seaton, was not there. Then I would give it to, you know, someone else other than him. I don't mean that this was something I did every single day, if he were not there, but usually I gave it to him.

Q. If he was there, you'd give it to him? A. That's right.

Q. Did you have a cash register in your office? A. No, sir.

Q. Did you have a cash box? A. Yes, sir.

[201] Q. And where did you keep it? A. In a desk drawer.

Q. Now, still talking about the cash that you had on your hands, how did you deliver that to Mr. Seaton? In what form? A. I would count it and total it and put it into an envelope.

Q. All right. And would you seal the envelope? A. Yes, sir.

Q. All right. Would you put anything else in the envelope? A. Just the adding machine tape with the total amount in it.

Q. All right. Anything else? A. No, sir.

Q. Now, at that time, what have you done, or what did you do with this sheet, the voluntary checkoff sheet, or whatever you call it? A. Well, at the end of the day I kept those segregated for the day. Those totaled out to the total amount of the checks and the total amount of the cash that I had for that day, and then I would post those to the individual cards for the men.

Q. All right. Now, about these individual cards for [202] the men. Can you tell us about them, what was on the cards, and what you did with them? A. Well, it just had the man's name and address at the top of the card. I don't remember exactly how the columns were, but I believe it was a date, and it was posting date, the date that I was posting, and the next column the amount I was posting for that particular time, and then the total amount. Then I would pick up the total next time, and, you know, post that, and would add to it; running total on it.

Q. So beginning in January of 1963, did you have one of these cards for each man that was working on a 562 job? A. No. I made the cards—You mean as we started?

Q. Yes. A. I made the cards up when—when we first started, I just started making up the cards as the sheets were coming in.

Q. Oh, I see. When one of these collection sheets would come in, you would get the name off? A. That's how we started; yes.

Q. All right. Then over a period of, I guess a few weeks, you would have a card then for every person who was working? A. (Indicating yes.)

Mr. London: I will object to the form of this question.

The Court: All right. It will be sustained.

Mr. Riddle: All right. I will withdraw that, Your Honor. [203] Q. (By Mr. Riddle) Do you know at what time, or at what point of time, you had one of these individual cards for each worker on a 562 job?

Mr. Randall: Your Honor, I am going to object. It is assuming a fact that she's not testified to, that she had one for each worker; only people that contributed.

The Court: I think that this is leading, and assumes something that isn't in, so the form of the question is objectionable. The objection will be sustained.

Mr. Riddle: All right. I will withdraw that question.

Q. (By Mr. Riddle) Ma'am, did you make a card of the type that you described for each member of 562, or each person who was working on a 562 job when a contribution came in from him? A. Yes, sir, I made a card.

Q. All right. Now, how many of these cards did you make during the first two months that you were on the job there? Your best estimate. A. Well, I would guess,

but I wouldn't have any idea. I would say around 800 or—but I mean it is just a guess. I don't know.

Q. All right. Now, these individual cards, again referring your attention to them, where were they stored or kept? [204] A. Well, we had a cabinet where the cards were, had a drawer that could be pulled out, and they were set in there right alongside of the machine that we posted to.

Q. All right. And where did you store or keep these individual collection sheets? A. I had a cabinet, a steel cabinet that I kept them.

Q. All right. Now, was your room, the room that you were working in, locked? A. When I was not there. But when I was there, it was not locked.

Q. All right. Who had a key or access to your room? A. I had a key, and I think there was a master key for all the rooms. One key, I think, fit all the rooms up there, but I don't know who had a key to it.

Q. You say there was a master key? A. That fit all the doors in that second floor, but we only used the one office.

Q. Do you know where the master key was kept? A. No.

Q. Do you know who had access to the master key? A. No.

Q. We've talked specifically about January, and possibly February of 1963. I understand from your testimony that you worked continuously in this office up until March or April of 1964? [205] A. Yes, sir.

Q. Did your duties change any from month to month from what you have testified to about January and February? A. No. It was approximately that all the time. That's approximately what I did all the time.

Q. All right. Now, throughout that period of time, did you ever make a deposit of the cash in a bank? A. No, sir.

Mr. Randall: Your Honor, what period of time is he referring to?

Mr. Riddle: From January 1, '63, until——

The Court: Well, I think that it follows the question before, and the question before had to do with her duties until she left in April of '64.

Mr. Riddle: Thanks, Your Honor.

Mr. Randall: I am sorry. I didn't understand.

The Witness: I made no deposits into the bank at any time.

Q. (By Mr. Riddle) of cash? A. Of anything. I made no deposits.

Q. And throughout that period of time, that is, the time that you were working there, you gave the cash to Mr. Seaton if he was present? A. Yes, sir.

[206] Q. And if not present, to somebody else? A. Yes, sir.

Q. Ma'am, again referring your attention to these cards for these checks——

(Thereupon, Government's Exhibit No. 70 was marked by the reporter for the purpose of identification.)

Mr. Riddle: Your Honor, we had a number of exhibits from 1 through 69 marked previously. This exhibit was not marked previously, so we are giving it the number 70.

The Court: All right.

Q. (By Mr. Riddle) I'll show you, ma'am what has been marked Government's Exhibit 70, and ask you to examine it for us, if you could, please. Is that a familiar document to you? A. Yes, sir.

Q. All right. What does it appear to be? A. A contribution sheet; copy of a contribution sheet.

Q. Is that this collection sheet, or contribution sheet that you have been referring to heretofore in your testimony? A. Yes, sir.

Q. And that contains the name of the workers? A. Yes, sir.

Q. Amounts paid, hours worked and totals? A. Yes, sir.

Q. All right. And for what pay period does that sheet [207] that you have in your hand cover? A. It says March 10, 1963.

Q. March 10, '63. All right. And what job would that be? A. It says Tom Sauk.

Q. Tom Sauk job? A. Yes, sir.

Q. And it has a number of employees' names on the left-hand column? A. Yes, sir.

Q. All right. What is the name of the first employee? A. R. Davis.

Q. All right. And then does it indicate the number of hours worked? A. Yes, sir.

Q. How many hours did he work? A. It says eight hours each day for five days; 40 hours.

Q. And what appears in the extreme right-hand column? A. Paid column, $7.50.

Q. Now then, what does that indicate to you as the office manager or bookkeeper? The $7.50? A. That is how much he paid for the week.

Q. All right. Does that tell you whether or not he's an out-of-towner or a member of Local 562? [208] A. This would be an out-of-towner.

Q. An out-of-towner? A. Yes, sir.

Q. How could you tell that would be an out-of-towner? A. By the amount of money that he paid.

Q. By the amount of money that he paid. All right. Let's look at another one on the list. Look over care-

fully and see if you can see or identify any person on this list who was not an out-of-towner that would be a regular member of 562. A. I don't know them by name.

Q. All right. But by using your analysis, based upon the paid column on the right side——

Mr. Daly: Your Honor, we will object to this. I think he is asking the witness to make an assumption, something she doesn't know of her own knowledge.

The Court: Well, I think maybe the form of the question may be objectionable, Mr. Riddle, but I think that you can ask her if there is any amount in the right-hand column that is less than the one, or different than the one that——

Mr. Riddle: Very well, Your Honor.

Q. (By Mr. Riddle) By looking at the right-hand column, is there any amount less than the one you just mentioned, Mr. Davis? A. Yes. Six dollars for four days worked.

[209] Q. Six dollars for four days worked. Now then, is there any other difference in the column from the one that you mentioned first, Mr. R. Davis? A. The next one would be the nine dollar one.

Q. What is that man's name? A. R. Seeker.

Q. Nine dollars. All right. Now, how many hours did he work? A. He worked thirteen hours one day and eight hours every other day.

Q. So he worked more than forty hours that week? A. Yes, sir.

Q. And there's a total, I believe, appearing on the bottom on the right-hand side? A. Yes, sir. One hundred seventeen dollars.

Q. One hundred seventeen dollars. And this is for how many employees? A. Sixteen.

Q. Sixteen. Ma'am, I notice that there appears on here a column between the hours worked and the name of the worker. A. Yes, sir.

Q. Can you examine that and tell the Court and jury what that column contains? A. That's an accumulation of several weeks' work for [210] posting rather than post each individual week. Sometimes we did, but if we didn't have time, we would add them up, you know, like if for two or three weeks, or however many weeks I would have, and put that total, accumulation total in that column there, and post that figure.

Q. All right. Now, who did the accumulating and the posting of that figure on this sheet? A. I did.

Q. All right. Let's take the top man that appears on there. His name is Davis. A. Yes, sir.

Q. And in the first column there appears a figure of thirty dollars? A. Yes, sir.

Q. What does that thirty dollars indicate? A. That he had paid for several weeks, and I added his totals together and posted them at one posting, thirty dollars.

Q. Then does this show the amount of money he's paid theretofore between—for a given period of time? A. It would show that he had paid for several weeks, and that I posted them at one time.

Q. How does this column here, the first column, differ from the last column? Can you explain that to the Court and jury, please? [211] A. How does it differ?

Q. Yes. A. Well, it's an accumulation of things that I totaled up and posted. These figures here, if you mean—these were put down by someone on the job. I put these here down here.

Q. So they are your work product? A. Yes, sir.

Q. And how did you go about finding out how much had previously been paid by these sixteen employees? A. Well, what I meant by that was I would have several weeks of

this Tom Sauk job, for instance, there that had not been posted, so instead of posting Mr. R. Davis $7.50 for that week and $7.50 for the next, I would take all these sheets and add them together and put one figure down here, and then post this figure here, and then these sheets would have been clipped together and the totals here would equal the totals of each individual sheet.

Q. Very well. All right. Now, then, where did you enter this thirty-dollar figure which would be an accumulation of several weeks, or a few weeks? Where would you enter that figure in your records? A. On Mr. R. Davis's card.

Q. His individual card? A. Yes, sir.

[212] Q. All right. Now then, is this the type of posting that you did on the individual card that you testified to earlier? A. Yes. I would either post them weekly as they came in, or, you know, how much they were paid. If I did not have time to get them all posted, then I would add them up like this and post them like that, you know, several weeks together.

Q. All right. Now, so on this individual card, if I understand your testimony, there would be at all times the total amount paid for the period indicated on it? A. On the individual card there would be the total amounts that they had paid; yes.

Q. All right. From whatever job they were working on? A. Yes.

Q. All right. Now, the workers who appear on this particular sheet, that is, Government's Exhibit No. 70, I believe you say that that appears to be that they were working on the Tom Sauk job? A. Yes, sir.

Q. What would you do, if anything, in the event a worker appearing on that sheet was transferred to the Portage de Sioux job? A. Nothing. I wouldn't possibly even know it.

Q. All right. How would you pick that person up on his [213] single job? A. When he would be reported from a different job, or else mail his job in, or pay it. Where he worked had no bearing on how I was handling it.

Q. But the question I am asking you, ma'am, is even though he did change jobs in the week, at the end of the period you would pick his name up and enter on that single card the total amount he had paid, whether it was from the Tom Sauk job or from another job. A. I guess I'm not explaining it right.

Q. Well, please do. A. I would enter all the names on this sheet. Now, if he worked at a different job, and his name appeared on that sheet, then I would enter it from that sheet, but I would not, you know, know whether he was at one job or another. Just wherever his name would appear, that's how I would post him.

Q. All right. Ma'am, from the records that you kept, could you determine if a person was delinquent or in arrears? A. Well, no, because I really don't, I wouldn't know like if they were working or not working, or if they were, you know, in town or out of town, or—Now, I could show you if a man had not paid anything, but that would not necessarily mean he was delinquent. For instance, he may have retired, or he may be sick, or he may not be working, or whatever.

[214] Q. But the records you kept in your office would tell you whether or not a man had paid anything for any given week? A. Yes, sir.

Q. And if you wanted to check John Jones working on the job down at Tom Sauk, all you had to do was go to the record and check to see if he had paid? A. Again, not by jobs. His record would not show that. If I were to look up, you know, like for instance where this Mr. Davis, if I knew he was working at Tom Sauk, I would have to look at these records.

Q. All right. And of the 800 or so cards that you testified you had, in just a few seconds you could look to his card and tell? A. How many dollars he had paid?

Q. How much he had paid. A. That's right. Yes, sir.

Q. And from that could you find out how much he had paid, and from the cards or from the sheets you have in your hand, you could find out how much he had worked? A. Not necessarily. Not necessarily that either.

Q. Ma'am? A. Not always had a way either, because many times they would put, I mean everyone did it a little bit different, but many times they would have on these sheets only men who had [215] paid, for instance. Now, he may be working there and have not paid. Do you see what I mean?

Q. All right. Now, then, suppose—I am asking you the way you handled your office now. A. Yes.

Q. Suppose that this R. Davis on one of these reports shows up as having paid nothing? A. There were some that did it that way too. They had nothing there.

Q. Then suppose the next week the sheet came in from the same job for the same R. J. Davis that shows he had caught up. How would you enter that? A. Just in the total amount.

Q. From checking the collection sheets that came in, could you determine whether a man had caught up or whether he was delinquent?

Mr. London: I am going to object to this, Your Honor. There is no such thing as a man being delinquent or being in arrears or having to catch up. There is none of that in evidence.

The Court: I assume what you are objecting to is the word "delinquent." I will sustain it as to that word.

Mr. Randall: Your Honor, in addition to that, she said she had no way of telling at all if they didn't list the [216] name.

The Court: I think he has a right to determine what the records were that were employed.

Q. (By Mr. Riddle) Ma'am, may I ask you this question: In examining the type of report, the form you have in your hands, from time to time, did you notice that notations would be entered frequently showing that a person owes or that a person was behind? A. That was written on records.

Q. Often and frequently, was it not?

Mr. London: I will object to the form of this question.

Mr. Riddle: I will withdraw it.

The Court: The questions were whether or not she ever noticed. All right. She may answer.

The Witness: Yes. Yes, I did notice it.

Q. (By Mr. Riddle) What would you notice with respect to that? A. Well, sometimes it would just have nothing in this total paid column. Sometimes there would be a notation "owes".

Q. Owes? A. Or sometimes there would be a notation that would say, "Paid by mail," or, "Paid at the hall," or, you know, they would write little things in it.

[217] Q. Ma'am, on the particular sheet for the week ending March 14, 1963, are there any people on that job who failed to pay or contribute? A. No, sir.

Mr. Daly: Your Honor, I am going to object. She wouldn't know how many people were on the job. She only lists those that did pay.

The Court: Well, I will sustain the objection as to the form of that question, and to the question. You might

ask her if this affects all people that were working at Tom Sauk.

Mr. Riddle: I will withdraw that question.

The Court: Or if she knows how many were working.

Q. (By Mr. Riddle) Ma'am, of the sixteen names that appear on that sheet, had any of those sixteen not paid for this work period? A. No, sir.

Q. Now then, ma'am, do you know, of your own knowledge, if anybody else was working on this project at Tom Sauk for that period ending March 10, 1963? A. I don't know who works on the jobs.

Mr. Riddle: All right. If it please the Court, at this time we'd like to offer into evidence the Government's Exhibit No. 70.

The Court: Well, I think it is admissible, but I [218] would prefer that we try to get as many as we are going to have, and then, although Mr. Nangle was jumping to his feet there. Do you have an objection, Mr. Nangle?

Mr. Nangle: Your Honor, I'd like to confer with these others. The only thing is that the original is available, and we might want to examine the original before Your Honor actually admits this in evidence.

The Court: Well, that is perfectly all right. I would think that you would know.

Mr. Nangle: Well, we weren't advised that this document might be offered in evidence today, Your Honor.

The Court: What?

Mr. Nangle: I didn't know that this document would be admitted in evidence.

The Court: I realize that this was not one that you went over last night, but wouldn't it be more orderly for

your purposes to get them in line, and ultimately I will admit 1, 3, 7, 10, and so forth, and maybe 70.

Mr. Riddle: Your Honor, I will withdraw our offer at this time, and we will submit a number of them at the same time later.

Q. (By Mr. Riddle) Ma'am, in examining the sheets, hundreds of sheets that came in while you were working there, or there, did you notice any collections or payments from [219] apprentices?

Mr. Daly: I will object, unless——

Mr. Randall: No foundation.

Mr. Riddle: All right. I will ask her——

The Court: All right.

Q. (By Mr. Riddle) Are you familiar with the term "apprentice"? A. Yes, the term apprentice.

Q. What do you understand an apprentice to be? A. One learning the trade; not a journeyman, not a full journeyman.

Q. And not a member of the local? A. Well, now, I'm not sure about that.

Q. Well, do you know whether or not apprentices paid into the fund while you were there? A. I'm not sure. I don't remember ever—Do you mean like a special collection of apprentices?

Q. Yes. Or no collection from apprentices at all. Do you know? A. No, because I wouldn't know them by name. I wouldn't know any names of apprentices, and if they didn't show up on the sheets, I wouldn't know if they were apprentices or not.

Q. During the time you were there, do you know of any [220] member of the 562, or any person working on the job, who didn't pay into the fund that you controlled? A. Well, I would have no way of knowing like who would

not pay, you know, if they paid regularly, because of the work schedule, because I wouldn't know whether they were working or not.

Q. Do you know whether an apprentice pays the regular dues into the union? Do you know that? A. No, sir.

Q. Ma'am, again referring to the sheet here, or the title sheet, and it's evidenced by Government's Exhibit 70, did you have a supply of these in your office? A. Yes, sir.

Q. Do you know how these got from your office into the hands of the foremen or stewards? A. Well, the one who would bring the reports in, if they needed more sheets they would at times ask me for them, and I would give them more sheets. Now, whether or not they gave them to the foreman, I don't know, but I know that is one of the ways that they got them. I had, you know, a supply of them.

Q. Now, when you began working there on January 1st—the first week in January, did you distribute these sheets to everyone? Or how did you distribute them out on the jobs? [221] A. I don't know. I don't think I gave them out as a group. I think they were already given out. That part of it had been taken care of, as I remember. I don't remember giving them out as a group. Just when they needed more, then I would give them.

Q. When you came on the job, these forms, collection sheets, were already out on the jobs, is that what you are telling us? A. Yes, that's how I believe it was.

Q. All right. Ma'am, are you familiar with the designation of metal tradesmen? A. No, sir. I mean I have heard metal tradesman, the word "metal tradesmen," but I don't know what it is.

Q. Do you know the difference between a pipefitter and a metal tradesman? A. Well, pipefitters—I know what pipefitters are, but I don't know what metal tradesmen are.

Q. Do you know if metal tradesmen are a part of the pipefitters' local? A. No.

Q. You don't know that? A. No, sir.

Q. Did you ever see any metal tradesmen come into your office, or come in where the Voluntary Fund was, and identify [222] himself as such? A. No, sir.

Q. Ma'am, on the individual sheets or cards that you maintained for each member or worker, I believe you testified that you had his address on there? A. On some of them, I did.

Q. All right. Where did you obtain that address? A. I believe I was given a list. I was having problems identifying people. There were so many names that are alike, similar, and I was trying to find, you know, a way that I could perhaps identify them better, and I believe I asked for a list of names and addresses. I thought by this I could perhaps tell them apart.

Q. How did you ask for that list of names and addresses? A. I would imagine it would be Mr. Seaton, but I'm not positive of that. I'm pretty sure that's who it was.

Q. All right. And what did you obtain from Mr. Seaton in response to that request? A. Addresses for the—some names and addresses that I tried to, you know, identify these people with. I put on their cards then.

Q. All right. Now, making reference to this pension fund that you keep now—— A. Yes, sir.

[223] Q. Can you tell the Court and jury whether or not the out-of-towners are given any credit for pension for money that comes into that fund if any money is paid in for them? A. Well, the out of town people, there's no difference in them in the welfare. Anyone who works out of this local in this jurisdiction is paid fringe benefits into this local, so our office actually doesn't keep any distinction between the out-of-towners or members of 562. That doesn't enter into it, and their benefits are the same.

Q. So on the welfare, not welfare, but the pension and welfare portion you get from the contractors? A. Yes, sir.

Q. This contains contributions from them to the out-of-towners, as well as your regular members? A. Yes, sir.

Q. All right. Who succeeded you in your position? A. Edward Beck.

Q. Ma'am, are you related to either of the defendants? A. Yes, sir. Mr. Callanan is my uncle.

Q. Are you married to his son, or how is it? A. No. He is my mother's brother, and my uncle.

Mr. Riddle: We have nothing further of this witness at this time, Your Honor.

Mr. Randall: Your Honor, may I be permitted to [224] interrogate the witness?

The Court: All right.

Mr. Randall: May I first ask if there is any Jenks statement on this witness?

Mr. Riddle: No Jenks Act.

Mr. Randall: Did the witness testify before the grand jury?

Mr. Riddle: Yes, sir.

Mr. Randall: May I request her testimony before the grand jury?

The Court: We will have a hearing on this.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

The Court: I think that maybe they are entitled to this.

Mr. Riddle: Your Honor, we have no objection for them seeing the transcript of the grand jury as these witnesses go on the stand. We have concluded that that would be in the interests of justice.

The Court: How much testimony is there?

Mr. Riddle: Fifteen or twenty pages; not too much.

The Court: How long would it take you to digest it?

Mr. Randall: Not very long, Your Honor. I'd be willing to proceed with some interrogation of this witness, and [225] maybe we could get the testimony and the other attorneys will look at it. We will try to do it as speedily as possible, Your Honor, and if we could get it before the witness is excused——

The Court: Let the record show that the District Attorney's office has given a transcript of this witnesses' testimony before the grand jury.

Mr. Randall: When you have your regular recess, we can digest it.

(Thereupon the trial was resumed before the jury as follows:)

The Court: Members of the Jury, the District Attorney is giving a transcript of this witness's testimony before the grand jury to the defense cousel. It is the first time they have seen it, so we will have about, well, be back about twenty after. Be guided accordingly now, so be available at twenty after, and bear in mind the admonition I have given you heretofore. Young lady, you can step down.

(Following a brief recess, witness Patricia Stieferman resumed the witness stand, and the further following proceedings were had:)

Cross-Examination.

By Mr. Randall:

Q. Mrs. Stiefelman, in your direct examination you first describe your functions with the Welfare Fund, or [226] welfare benefits for pipefitters? A. Yes, sir.

Q. And you said that the contractors paid so much per hour into this Welfare Fund? A. Yes, sir.

Q. How much do they pay per hour of work into the Welfare Fund? A. Two dollars and seventeen and a half cents.

Q. Two dollars and seventeen and a half cents. Now, how much do the pipefitters draw per hour of work, in addition to the Welfare Fund? Do you know that? A. No, sir.

Q. What their wage scale is? A. No, sir.

Q. And turning for a moment over to your later testimony concerning the voluntary contributions, during the period that you were in charge of that, or worked with that? The members of Local 562 paid twelve and a half cents per hour; isn't that correct. A. A dollar for eight hours; yes, sir.

Q. And those people who were not members paid twenty-five cents per hour; is that correct? A. Yes, sir.

Q. Now, let's talk a moment to what Mr. Riddle [227] characterized the out-of-towners. Now, many of those people who were not members of Local 562 also were not members of another pipefitters local, but were members of the Boilermakers or Ironworkers, and those unions? A. Yes, sir.

Q. And some of them were not members of any union; isn't that correct, ma'am? A. I don't know that.

Q. You don't know that. Now, getting back into your earlier testimony, are you aware that the pipefitters local held their meetings at the Electricians' hall? A. Yes, sir.

Q. In other words, they don't really have a hall at all, do they, Mrs. Stiefelman? A. No, sir.

Q. All you really have there is an office building? A. That's right.

Q. And during the—at the present time, the upstairs portion of the office building is occupied by the staff of the Welfare Fund, or the welfare benefits? A. Yes, sir.

Q. This fund in which the contractors pay two dollars and seventeen and a half cents per hour into? A. Yes, sir.

[228] Q. And the people who work under the jurisdiction of Local 562, the contractors pay the same amount into that Welfare Fund, don't they? A. Yes, sir.

Q. And they receive the same benefits? A. Yes, sir.

Q. As the members of the local? A. Yes, sir.

Q. And that includes Christmas vacation benefits; is that right? A. Vacation.

Q. Vacation benefits, medical benefits? A. Yes, sir.

Q. Does that include scholarship benefits for some of the children of this local, or out-of-towners? A. I am not sure whether it includes scholarships, but it includes life insurance and hospitalization and medical and vacation and holiday benefits.

Q. Now, you have been with the Welfare Fund since March of '64; is that correct? A. Yes, sir.

Q. What was being paid per hour as benefits into that Welfare Fund when you first went to work there in 1964? A. I believe it was ninety cents.

[229] Q. In other words,—— A. Seventy-five cents.

Q. In other words, it's gone from seventy-five cents to two dollars and seventeen and a half cents since March of 1964? A. Yes, sir, it's gone up.

Q. Now, in the case of the Welfare Fund, at the present time that is paid directly by the contractors; isn't that correct? A. Yes, sir.

Q. In other words, they have checkoff, what we refer to as checkoff. It is deducted? A. No, sir. This is not deducted.

Q. Oh, pardon me. It is not. It is in addition. A. This is in addition to their salary.

Q. But it is paid directly by the contractor? A. Yes, sir.

Q. And it is not collected from the men themselves? A. No, sir.

Q. Ma'am, going back to the beginning of this thing, when you first started to work for the Voluntary Fund you say the offices of the Voluntary Fund were upstairs in this building; is that correct? A. Yes, sir. There was one office upstairs.

[230] Q. And downstairs you have five offices? A. Yes, sir.

Q. And at that time one side of the corridor was the Welfare Fund? A. That's right.

Q. And the other side was the local's business? A. Yes, sir.

Q. And that's where the officers of the local and the business agents did their work? A. Yes, sir.

Q. Now, do they still do their work on that side of the hall, where they did in the beginning? A. Yes, sir.

Q. They still occupy exactly the same quarters? A. Yes, sir.

Q. The only change that took place was when the Welfare Fund grew bigger, it moved upstairs and the Voluntary Fund downstairs? A. Yes, sir.

Q. To the other side of the corridor? A. Yes, sir.

Q. Now, in this beginning, back at first when you were collecting this money, did you post the receipts, both cash and checks, to a cash receipts ledger? [231] A. Yes, sir.

Q. And those cash receipts ledgers, are they here? A. Yes, sir.

Q. Would you recognize them? A. Yes, sir.

Q. Is it one of these books here? A. Yes, sir.

Q. And which one is it, ma'am? A. It would be 1963.

Q. In other words, those are the ones—the one you would have would be '63 and '64? Is that correct? A. That is when it started.

Q. I am going to show you what's been marked as Plaintiff's Exhibits 1 and 2, and ask you if those are the cash receipts ledgers that you posted the money that you received, both cash and checks? A. Yes, sir, these are the ones.

Q. And you accurately reported the money that was brought in to you in those books, did you ma'am? A. Yes, sir.

Q. You didn't hide any out, or leave any out at all? A. No, sir.

Q. And all the money that you turned over to Mr.—may I take them back—to Mr. Seaton, or anyone else, [232] is accurately reflected in these books? A. Yes, sir.

Q. Now, ma'am, before you left this operation, before you left the Voluntary Fund entirely, didn't they abandon the use of the cards for each individual worker? A. Yes, sir, in '64.

Q. In '64. And why did you abandon the use of those cards for each individual worker? A. Well, they have served no real purpose for anything. It was a great deal of posting work, a great deal of individual work, but the cards were really of no benefit, and as I said before, the thing that I felt about it was that the names were so similar, and, you know, so it was hard to know that you had actually really posted it to the right person.

Q. First of all, you found it impossible to determine whether a particular individual had made the contribution; is that correct? A. Yes.

Q. Because of the similarity of the names, like J. Moore and G. Moore, and that sort of thing? A. Yes, sir.

Q. So you found it impossible to determine whether or not the people had made their contributions. It was of no value for that purpose? [233] A. Yes, sir.

Q. And, secondly, all you were really interested in was the amount of money contributed; isn't that correct? A. That's right.

Q. And you posted directly then from these collection sheets to your books? A. Yes, sir.

Q. Now, Mrs. Stiefelman, were you aware during the period that you were there that some of the workers did not contribute to the Voluntary Fund? A. Yes, sir, I knew that, but I said I could not identify or I could not tell by the sheets whether or not——

Q. You were just generally aware of the fact that it was not a complete system of contribution? A. Yes, sir.

Q. And you don't know who they were? A. No, sir.

Q. Nobody mentioned to you who they were? A. No, sir.

Q. You heard no discussion or complaints about those who were not contributing? A. No, sir.

Q. And so far as the cards were concerned, when you did keep the cards, you had no way of knowing whether everybody [234] was contributing and on the list at all, did you, Mrs. Stiefelman? A. No, sir.

Q. All you did was make a card up for a man who contributed? A. That's right.

Q. And you said sometimes when a sheet came in, one of the sheets that we identified as Government's Exhibit 70, there would be a name, and it said nothing, no contribution; isn't that correct? A. Yes, sir.

Q. Sometimes it said he had paid by mail? A. Yes, sir.

Q. Sometimes it said he had paid at the hall? A. Yes, sir.

Q. Now, by the hall, are you referring to your office building there? A. Yes, sir.

Q. And sometimes it said he owes? A. Yes, sir.

Q. And, of course, there may have been names that weren't on there at all, on the list? A. Yes, sir.

Q. Is that correct? [235] A. Yes, sir.

Q. Now, I understand because of your great difficulty in managing these cards and determining who was whom, you asked Mr. Seaton if he would try to get you some of the addresses to identify people? A. Yes, sir.

Q. And that was the only purpose of adding in some of the addresses? A. Yes, sir.

Q. Now, since the end of 1964, you have had nothing to do with this Voluntary Fund; am I correct on that? A. Well, no, I still help out. I don't work for the Voluntary Fund, but——:

Q. You still help out? A. Yes, sir.

Q. And do you see their bank statements and bank ledgers, and that sort of thing? A. Yes, sir.

Q. And isn't it a fact, Mrs. Stiefelman, that the cash was all deposited, except what was expended in the early years, in the bank account ultimately? A. Yes, sir.

Q. And it was all accounted for, wasn't it? A. Yes, sir.

[236] Q. And it agreed with the cash that you received and first entered into these books? A. Yes, sir.

Mr. Randall: That's all for me, Your Honor.

Mr. Daly: I have no questions, Your Honor.

Mr. Nangle: I have no questions, Your Honor.

The Court: All right. Any redirect?

Mr. Riddle: Yes.

Redirect Examination.

By Mr. Riddle:

Q. Ma'am, you mentioned that since March or April of '64 you still go back and help out some with the—— A. Yes, sir.

Q. How often do you go back and help out now? A. Well, it's no particular time or hours, but I usually help out with reconciling the bank statements, and I posted these ledgers, kept those up. I don't work there daily though, or accept any money, or—there's no posting or anything done, but I usually help out with these things.

Q. Is this each week? A. No, sir.

Q. Once a month? A. Yes, sir. Usually in the month I'd say maybe four or five hours in the month, or, you know, maybe a little bit more, [237] depending.

Q. And since you left the Fund, do you get one paycheck from the union? A. No. I'm paid from the Welfare office.

Q. From the Welfare office? A. Yes, sir.

Q. By Welfare office check? A. Yes, sir.

Q. You just receive one check each month since you work there, and that is from the Welfare office? A. Yes.

Q. For these hours that you work each month on these books, on this Voluntary Fund, you haven't got a separate check for that? A. No, sir.

Q. Ma'am, showing you what's been marked Plaintiff's Exhibit 1, I'll ask you to examine it and identify it for the Court and jury, please. Can you identify it for us? A. Yes, sir.

Q. Would you please do so? A. This is the ledger that I wrote up that I kept for 1963.

Q. Now, in this ledger you contain, or you enter what figures and what—or make what entries in it? [238] A. Well, the bank deposits, and the dates, and the amount of

cash down here, and the checks, the check numbers and the dates, and to whom they were written, and the amounts, and then totals on all of them.

Q. Does this book reflect all receipts and all disbursements from out of that particular fund? A. Yes, sir.

Q. For the year 1963? A. Yes, sir.

Q. All right. Thank you. Ma'am, I will show you now what's been marked Government's Exhibit No. 2, and ask you to examine it, if you would, please. Do you know what it is? A. Yes, sir, it is the——

Q. Would you tell the Court and jury what it is, please? A. It is the journal ledger for 1964, and it has the same thing, the bank deposits in it, cash deposits, and the checks, and to whom they were paid, and the amounts and the totals.

Q. All right. In other words, it shows all receipts and all disbursements? A. Yes, sir.

Q. And to whom the disbursements were made? A. Yes, sir.

Q. Does it purport to indicate the purposes for the [239] disbursements? A. Yes, sir.

Q. And what categories are contained in that particular exhibit? A. I think I have it here. Office equipment, office expenses, payroll taxes, political, charity, defense, educational, legislative and miscellaneous.

Q. All right. Is that same thing true for Exhibit No. 1, 1963? A. I believe it is; yes, sir.

Q. It is. What you have just examined and identified as the original record and books of the Fund? A. Yes, sir.

Q. And that same thing is true for 1 and 2? A. Yes, sir.

Q. I notice that, well, Exhibit No. 2 contains entries for the period from and through the rest of the year, as well as the first several months? A. Yes, sir.

Q. Did you enter all of these yourself? A. Yes, sir, I continued to do it all until the end of '64.

Q. Even after you had gone to the other fund? A. Yes, sir.

[240] Q. Now, I show you Government's Exhibit 3, and ask you to examine it and identify it for the Court and jury, if you would, please? A. This is the record for 1965.

Q. For 1965. Does it have the same entries and the same categories and columns as the others? A. Except that in '65 we did not break it down according to categories. It is just the checks and the names of the people that the checks were written for, and the total amount. There were no categories for them.

Q. So it shows all receipts and disbursements? A. Yes, sir.

Q. And to whom the disbursements were made? A. Yes, sir.

Q. But it doesn't identify the purpose? A. That's right.

Q. Now, did you keep this book also and make the entries? A. Yes, sir.

Q. Throughout the whole year of '65? A. Yes, sir.

Q. All right. I will show you what's been marked as the Government's Exhibit No. 4, and ask you to examine it and identify it, if you can, for us, please. A. This is a check register that was used in 1965.

[241] Q. 1965. Will you define, or explain that more thoroughly for the jury, please? A. Well, this I did not keep at this time.

Q. All right. A. But it has a check number and the date the check was written, and to whom, and the amounts, and then the bank deposits that were made.

Q. All right. Now, I'll show you what's been marked as Government's Exhibit No. 5, and ask you to examine it and identify it for the Court and jury, if you would,

please. A. This is the record for 1966, and I kept this record.

Q. All right. And what does it contain? A. The disbursements and the receipts and the deposits into the bank.

Q. All entries made in there were made by you? A. Yes, sir.

Q. All right. At whose request or direction did you go from your Welfare Fund chores to your Voluntary Fund chores? A. Well, I just continued to help out. In '64 when I left, no one was really assigned to the job, so while I, you know, when I started working in the welfare office, then I continued to do this, the posting and keeping up the records, and I did it in the evenings and on Saturdays so that we could, you know, keep it up and finish it off for the year. Then in [242] '65 I just helped out whenever I could, you know, whenever they needed anybody, but mainly for this I kept the journal and made the, took care of the—I have lost my words—bank statements and reconciled them, and things like that.

Q. All right. But after you left that particular Fund's office in '64, you didn't continue to collect the money that came in? A. No, sir.

Q. All right. Now, you have identified the ledgers or the books for the years '63, '64, '65 and '66, and also the book that has on the front of it, "The Executive," that has been marked Government's Exhibit No. 4. Can you explain to the Court and jury what that Exhibit No. 4 contains that wouldn't be contained in here, or what function it serves? Can you tell us that, please? A. Well, this was the check register. As they wrote out the checks they would enter in here the check numbers and dates and names, and to whom they were issued, and keep running totals on them. These were really transferred into this here record in here.

Q. Would every item and entry in the book that you have, that is, Government's Exhibit No. 4, been always contained in—— A. In this year's in that.

Q. ——in the year? [243] A. Yes, sir.

Q. And that's for the year '60—— A. 5.

Q. '65. So it would be in Government's Exhibit No. 3 for the year '65? Is that correct? A. Yes, sir.

Q. All right. Thank you, ma'am.

Now, did you write checks for the Fund yourself? I am talking now about the Voluntary Fund? A. The Voluntary Fund, in '63 and '64.

Q. All right. A. I did. Not all of '64 now, but in the beginning of '64 I wrote them all, and after that I have occasionally paid bills or typed up the checks for them, but I did not from then on handle the business or the checks.

Q. When you didn't write the checks that were drawn on the Voluntary Fund, do you know who did write them? A. Usually Mr. Beck.

Q. All right. Is he a typist? A. He types; yes.

Q. He does type some? A. Yes.

Q. Now, did the Voluntary Fund have checks printed? A. Yes, sir.

[244] Q. Could you identify the checks that were printed and used by the Fund, if you were to see them? A. Yes, sir.

Q. Ma'am, I will show you what has been marked Government's Exhibits 6 through 59, and ask you to examine them and see if you can identify them for the Court and jury, please? A. These are copies of the checks.

Q. Exact copies. Are they photo-copies? A. Yes, photostat copies.

Q. All of them checks on the account of the Voluntary Fund? A. Yes, sir.

Q. All right.

The Court: Did you say '59 or '69?

Mr. Riddle: It would be '59, Your Honor.

Ma'am, can you, by looking at these checks, Exhibits 6 through 59, state which ones you wrote? Could you do that?

A. Well, I can say that in '64 most—all the checks were written by me that were here, I am pretty sure of that.

Q. What about '63? A. I don't see any.

Q. All right. '64. A. In '65, as I say, I occasionally did write checks or [245] pay bills, but I wouldn't have any idea which ones they were.

Q. But you can say that all the checks written in '64 were written by you? A. Yes, sir. Most all of them. There were occasions when I didn't, if I was sick, or off, or something.

Q. Well, I'll show you what's been marked Government's Exhibits 6 through 34, which appear to be all the checks of this series of exhibits that were written in 1964. Will you examine them and see if you can state whether or not they were written by you? A. The only ones that were not written by me were these two.

Q. All right. You are handing me Government's Exhibits 30 and 32, and it is your testimony that they were not written by you? A. Yes, sir.

Q. But all the others, that is, 6 through 34, with the exception of 30 and 32, were written by you? A. Yes, sir.

Q. Now, can you tell the Court and jury at whose direction these checks were written?

Mr. Randall: Well, Your Honor, the foundation is missing as to whether it was anybody's direction. She may have just paid bills.

[246] The Court: I am sure she will answer. It will be overruled. Go ahead.

The Witness: Most of these are political checks, and Mr. Seaton would tell me, usually, who to make the check out to.

Q. (By Mr. Riddle) All right. I notice, ma'am, that all of these purport to be signed by Mr. Lawler, with the exception of Government's Exhibits 33 and 34, which purport to be signed by Lawrence L. Callanan. Can you examine those and see if those are, in fact, the signatures of Mr. Lawler and Mr. Callanan, if you know? A. Yes, sir, they are their signatures.

Mr. Riddle: At this time, Your Honor, we offer into evidence the Government's Exhibits 1 through 59, and ask that they be received, and withhold showing them to the jury.

Mr. Randall: Your Honor, could I examine these checks a little bit?

The Court: All right. What about 1, 2, 3 and 4 and 5? Do you have any objection to those?

Mr. Randall: I have no objection.

The Court: They will be received.

(Whereupon Government's Exhibits Nos. 1, 2, 3, 4 and 5 were received in evidence.)

(Mr. Randall examined exhibits.)

The Court: I take it there is no objection. Exhibits [247] 6 through 59 will be received.

(Whereupon Government's Exhibits Nos. 6 through 59 were received in evidence.)

Q. (By Mr. Riddle) Ma'am, Mr. Randall asked you about these individual cards showing the payment for

each of the people paid in. I believe you testified that after a while that system was discarded? A. Yes, sir.

Q. Do I recall your testimony to be that it had served no useful purpose? A. Yes, sir.

Q. All right. Ma'am, do you know who made the decision to institute that system to begin with? That is, in January of '63? A. No, sir, I don't.

Q. Did you? A. No, sir.

Q. There was a machine that was purchased for the purpose of keeping these individual card records? A. Yes, sir.

Q. Did you purchase that machine? A. No, sir.

Q. Do you know who did? A. No, I don't. It had been ordered before I got there, [248] so who—it came after I was there. It came sometime in January, I believe, around, you know, the first part of the year, but I did not. It was already purchased before—or that is, it was ordered before.

Q. Did you talk to anyone, or any of the defendants, at the time that the machine was delivered, as to what purpose or function it would—— A. Yes, sir, they told me that.

Q. By "they", who? A. Mr. Lawler told me that they had purchased a machine, or had ordered a machine, and that they were going to keep individual cards, and they were trying to set up a system at the beginning for the office, and thought that this was the best way to do it to begin with.

Q. All right. Ma'am, during the period of time that you have been in the Welfare Fund—— A. Yes.

Q. ——have those books been audited regularly? A. Yes, sir.

Q. All the time that you were working for the other fund, the Political Fund, were those books ever audited? A. No, sir.

Mr. Riddle: That's all.

The Court: Mr. Randall?

[249] Mr. Randall: Yes, I have a few questions.

Recross-Examination.

By Mr. Randall:

Q. Mrs. Stiefelman, this Government's Exhibit 4 served for the purpose and is the same as a stub checkbook? A. Yes, sir.

Q. Check stub book. Now, this group of checks, 6 through 34, that Mr. Riddle gave you as the checks of 1964, the last two, 33 and 34, are really 1964, aren't they, Mrs. Stiefelman? A. Yes, they are. I didn't notice that.

Q. And those in '65, the checks were signed by Mr. Callanan, and in '64 by Mr. Lawler? A. Yes, sir.

Q. Now, you looked at the checks for 1964, and you said that you wrote all of them, except Exhibits 30 and 32; is that correct? A. Yes, sir.

Q. And all of them, except 30 and 32, are typewritten, isn't that right? A. Yes, sir.

Q. And the reason you knew that you did not write 30 and 32 is because they are in somebody's handwriting? A. Yes, sir.

Q. And 30 is a check for $10,000 to—what is that? [250] A. Business & Professional Volunteers for Johnson and Humphrey and Kennedy.

Q. For Volunteers for Johnson, Humphrey and Kennedy? A. Yes, sir.

Q. And this is Exhibit 32, and that's $25,000 for the Friends of L. B. J.; is that correct? A. Yes, sir.

Q. So as far as the 1965 checks are concerned, they are here—Now, let me ask you this. These are not all the checks, are they? A. No, sir.

Q. These are just some that they have selected that are political contributions? A. Yes, sir.

Q. Now, many of the other checks, like payment of the bills, did somebody tell you when to pay the bills, or did you just write the checks for the bills? A. In '63 and '64, I just went ahead and paid the bills.

Q. And it was only in the event of the political contributions or charitable contributions—there were a lot of charitable contributions too, weren't there? A. Yes, sir.

Q. And in big sums? A. Yes, sir.

[251] Q. It was only in those special type of expenditures that someone told you what to do about that? A. Yes, sir.

Q. You wouldn't have known what to do about that without someone telling you what to do, would you? A. No, sir.

Q. On these checks for 1965, you don't know who wrote them? They are all typewritten? A. Yes, sir.

Q. And I notice on all these you use a check protector in putting in the amount? A. Yes, sir.

Q. And that's also true of these two that are handwritten, the check protector is in there; is that right? A. Yes, sir.

Q. Now, I notice there are also perhaps the amounts typed in on one of them, is it? A. Both of them.

Q. Did you type that amount in? A. I couldn't be sure whether I did or not. I mean I don't remember if I did.

Q. I see. Now, during the year 19 and 64, Mr. Lawler was the director of the Fund; is that right? A. Yes, sir.

[252] Q. And during the year 1965, Mr. Callanan was the director of the Fund? A. Yes, sir.

Mr. Randall: That's all, Your Honor.

Mr. London: No questions.

Mr. Daly: No questions.

Mr. Nangle: One minute. Could we have one second? No questions, Your Honor.

Mr. Riddle: Nothing further of this witness.

The Court: Step down. You may be excused. I take it you are through with this witness?

Mr. Riddle: Yes.

The Court: You may be excused, ma'am.

(Witness excused.)

EDWARD BECK,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Would you state your full name for the jury and Court, please? A. Edward Beck.

Q. And where do you live, sir? A. Pardon?

[253] Q. Where do you live? A. 22 Beaver Drive, Creve Coeur.

Q. How old are you? A. Thirty-three.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Kramer-Hicks Company.

The Court: Is that C or K?

The Witness: K.

Q. (By Mr. Riddle) What type work does Kramer-Hicks engage in? A. Pipefitting.

Q. And what project or construction job are you working on now? A. Gateway Ammunition.

Q. How long have you been employed by Kramer-Hicks? A. Approximately two months.

Q. Sir, are you a pipefitter? A. Yes, sir.

Q. Are you a member of Local 562? A. Yes, sir.

Q. How long have you been a member of Local 562? A. About eight and a half years, sir.

[254] Q. Sir, before working for Kramer-Hicks, where did you work? A. 1242 Pierce.

Q. For Local 562 there? A. The Voluntary Fund, yes, sir.

Q. And how long did you work there at Pierce? A. I believe it was approximately three years and eight months.

Q. Now, do you remember the date of your employment? A. I started in the first week of December of '64, I believe, sir.

Q. First week of December? A. I believe so; yes, sir.

Q. 1964? A. Yes, sir.

Q. Who employed you? A. The Welfare.

Q. The Welfare Fund employed you? A. Yes, sir.

Q. What person in the Welfare Fund employed you? A. Mr. Ed Henry.

Q. Mr. Ed Henry? A. Yes, sir.

Q. When you first began working there in the Welfare [255] Fund with Mr. Ed Henry, what were your duties? A. Various types of things that he set forth and had me do. I was more or less his assistant; keeping the records and going over fringe benefits.

Q. What records were you keeping of the Welfare Fund? A. Well, at that time we was tabulating them all by hand. That was before this new machinery, and that's more or less what I was doing, is tabulating the fringe benefits coming into the Local from the contractors.

Q. All right. Who else was in that office with you working? Mr. Henry? A. Mr. Henry; yes, sir, and——

Q. Pat Stieferman? A. Yes, and Cora Schulz. I believe Pat Stieferman at that time was employed by the Voluntary Fund.

Q. All right. How long did you work there in the Welfare Fund? A. I don't believe it was quite three years, sir. I think it was two and three-quarters years, I would approximate.

Q. So you went there to work in 1964, in December? A. Yes, sir.

Q. And you worked there for about two years? A. Two and a half; between two and a half and three, I guess, sir. I couldn't really——

[256] Q. That would put you up until about the middle of 1964? A. The middle of 1964? I don't understand, sir.

Q. I understand you went to work for the Welfare Fund in December of '64? A. Yes, sir.

Q. You worked for about two and a half years there? A. Yes, sir.

Q. That would put you up to about 1966. Pardon me. A. Yes, sir.

Q. All right. Then where did you go to work? A. In the Voluntary Fund, sir.

Q. All right. Who transferred you down to that job, or up to that job? A. Mr. Callanan.

Q. Mr. Callanan transferred you on it? A. Yes, sir.

Q. Do you remember what month this transfer was made? A. No, sir: I had been handling some of the records prior to that, and I don't remember just what date it was that I took over full time in the Voluntary Fund.

Q. But in about mid-1966, you were primarily assigned to work in the Welfare Fund? A. Yes, sir.

Q. But prior to that time, you were doing some work in [257] the Voluntary Fund? A. Yes, sir.

Q. Then you were transferred to the Voluntary Fund altogether? A. Yes, sir.

Q. Now then, when you moved down to the Voluntary Fund, can you tell the Court and jury just what your duties were, and what you did? A. The collection of money was the main portion of my job, keeping the records.

Q. Collection of money and keeping the records? A. Check disbursements.

Q. Writing checks? A. Yes, sir.

Q. All right. Now then, directing your attention to the part of your duties that had to do with the collection of money, what type of collection did you make? A. The ones that were brought into the office, sir.

Q. Who brought the collections into the office? A. Various people from the individual jobs.

Q. The stewards or foremen? A. Yes, sir, some of them were, and some of them weren't. It all depended on who was collecting the money. I don't really know what they were. I wasn't on the job. I don't know what [258] their capacity was.

Q. All right. But whoever was the collector would bring the money in to you? A. Yes, sir.

Q. Come into your office, and what would he give you? A. He would give me the Voluntary sheets and the collections.

Q. He'd give you these Voluntary sheets and—— A. The collections.

Q. And the collections. Would that be in cash? A. Mostly, sir; yes, sir.

Q. All right. Now, these Voluntary collection sheets, do you know whether or not they contained the names of the workers and the number of hours worked and the amount that that one was paying? A. Normally, sir; yes, sir.

Q. All right. After this was given to you, what did you do with it? I am talking about the sheet and the contribution. A. I checked the collections against the sheets, and then I would deposit the money, and put the sheets, you know, in my records.

Q. Now then, when did you first start collecting money? You said that you did some work over with the Voluntary Fund while you were still working for the Welfare Fund? [259] A. I couldn't tell you the exact date. I believe, if my memory serves me right, Mrs. Stieferman went to a school to learn how to run this machinery, and at that time I more or less took over the duties that she had been performing.

Q. Sir, maybe I didn't make my question clear, but was there a time that you were working for the Welfare Fund that you—on the side, did some collection of the money? A. Yes, sir.

Q. And how long a period was that? A. Like I say, sir, I can't remember. I'd have to check the dates somewhere. I don't know exactly when it was.

Q. Well, without—— A. I would say it is some time in—the best I can think, it was in the—oh, I'd say around February of '65, I think it was, but I couldn't be sure at all.

Q. All right. A. Approximately.

Q. Well, that is your best recollection. Was it that time that you began collecting the money? A. Yes, sir.

Q. Making collections? A. Yes, sir.

Q. And you did that throughout '65, and until the time in '66 that you were assigned back to the Voluntary Fund [260] altogether? A. Yes, sir, I imagine that's right.

Q. All right. Now, when you received the money, did you total it yourself? A. Yes, sir.

Q. Did you have any assistance? A. No, sir.

Q. Well, now during the time that you were working for both Funds, how would you know to go from one office to another office to make a collection? A. Well, sir, in the Welfare, that all came in by check, and there was nothing—I mean from the contractors I had nothing with them collections. And for quite a period of time I'd stay until about 9:00 o'clock in the evening, and come in on Saturdays on the Voluntary side of the question.

Q. Did you use either office that was convenient for you to make your collections during that period? A. Well, no, sir. I moved, the Voluntary Fund moved downstairs after a period of time, but which time that was, I'm not sure.

Q. What I am talking about is the period of time from December of, I believe you said—— A. The Voluntary Fund and the Welfare Fund were quite separate. I mean there was—there was no sameness at all.

[261] Q. My question, sir, is this: On occasions did you collect money for the Voluntary Fund while you were in the Welfare Fund office? A. Yes, sir, I believe so; sometimes, yes, sir.

Q. Would this be one time out of four or five, or half the time? A. Well, normally we had the bulk of the business after 4:30.

Q. The bulk of the collection business after 4:30? A. Yes, sir.

Q. At what hours would you collect money for the Voluntary Fund when you were still in the Welfare Fund office? A. There was no specific hours.

Q. Sir? A. It was no specific hours. If somebody came in, and it was my job to collect it, and I went over and took care of them, but we tried to keep most of our business for Voluntary after 4:30 until 9:00 o'clock or on Saturdays.

Q. If it came in after 4:30, you'd be in the Voluntary office? A. Yes, sir.

Q. If it came in through the day, you'd probably be in the Welfare office? A. Yes, sir.

[262] Q. And you'd tell the fellows to come in there and conduct your business in there? A. Well, no, sir. It happened so seldom we took them over to my office in the Voluntary. It wasn't an office. It was just a desk.

Q. The two were real close together? A. Yes, sir.

Q. You could just move from one to the other without any difficulty? A. Yes, sir.

Q. About how many feet apart were they? A. Well, they had, the one side was the Welfare, and the other side at that time was just classrooms, and my desk was in the classroom, and I'd say it was approximately across the hall and twenty feet down, or something like that.

Q. That would be twenty feet down, and how many feet acoss? A. Whatever the hall is. I'd say maybe ten feet, sir. I don't know.

Q. Ten feet? A. Uh hmm.

Q. Sir, on these cards that came in, were the list of the workers on it, and the amount they paid? A. Yes, sir.

[263] The Court: You mean cards or sheets?

Mr. Riddle: I mean sheets. Thank you, Your Honor. I am sorry.

Q. (By Mr. Riddle) The sheets that came in, did you have occasion to discuss them with the collectors that were coming in to pay you? A. More or less, just to check out the totals and see that they corresponded. That would be all I'd have to talk over with them.

Q. After the sheet was given to you, what did you do with it? A. I usually put it in my records and put it in the desk drawer.

Q. And the desk drawer was kept where? In the little office or—— A. Yes, sir.

Q. All right. All of these sheets of the sort that we are talking about, like I'm showing you here that are marked Government's Exhibit 70, but all of those sheets that came in you put them in this file? A. Yes, sir.

Q. This file, was it in a filing cabinet, or in a desk? A. I can't remember at this time. There was a filing cabinet, but I believe I kept them in the desk, and then when [264] I had a group of them, then I put them in the filing cabinet, I believe, sir, but I can't remember. It's been quite a while ago.

Q. This filing cabinet and the desk, was this inside a separate room? A. Yes, sir. It was used as a classroom at one time.

Q. Used as a classroom? A. Yes, sir.

Q. As a classroom, did other people in the union have access to that room? I mean could they come in? A. They could come in, but there was no occasion, because it was just desks, school-type desks.

Q. During the period of time that these records were in there, could Mr. Seaton come in, if he wanted to? A. Yes, sir.

Q. Could Mr. Lawler come in if he wanted to? A. Yes, sir.

Q. Mr. Callanan could come in if he wanted to? A. Yes, sir.

Q. In fact, did they come in often? A. No, sir.

Q. Did they ever come in while you were there? A. To maybe pass the time of day, or something, but very seldom. Their offices were all downstairs, and they had no [265] occasion to come up. They were able to, but I don't recall, they might have stopped in, sir, but——

Q. You say "by able to", you mean they had a key, or was it unlocked? A. It was usually open. The desk was locked.

Q. What about the key to the desk? Where was it kept? A. I usually kept it, sir.

Q. All the time? A. Yes, sir.

Q. What about to the filing cabinet? A. That wasn't locked, sir.

Q. It was not locked? A. No. Like I say, sir, I can't remember now whether I kept the records in the desk or in the filing cabinet, because its been quite a while ago.

Q. I see. Sir, during the period of time that you were working there, to your knowledge, was an audit ever made of the books? A. No, sir, not to my knowledge.

Q. All right. During that period of time, to your knowledge, was a meeting ever had of the Board of Directors of any group with reference to this Voluntary Fund? A. I don't believe I understand the question, sir.

Q. Well, you know what a Board of Directors meeting is? [266] A. Yes, sir.

Q. Or a membership meeting, or a committee meeting. My question is: Was such a meeting as that had or held where the business of the Voluntary Fund was discussed? A. I don't believe—no, sir, I don't believe so.

Q. Who did you report to? A. To the director, Mr. Callanan.

Q. Is that the only person to whom you reported? A. Yes, sir. In reference to the Voluntary Fund. Is that what you mean, sir?

Q. Yes. In reference to the Welfare Fund, who did you report to? A. That was Mr. Henry.

Q. Mr. Henry? A. Yes, sir.

Q. Yes. What is his title or position with the union? A. He is the executive director of the Welfare, I believe it is.

Q. All right. Now then, as a collector of funds into this Political or Voluntary Fund, did you receive monies from any other source other than from workers? A. No, sir.

Q. Was all the money that you received, money for the Voluntary Fund? [267] A. Yes, sir.

Q. Are you acquainted with the fund that was normally referred to——

Mr. Daly: Your Honor, at this time we will object to any—I don't think it is relevant or material.

The Court: I don't know what he is talking about.

Mr. London: May we approach the bench?

(Thereupon, the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. Riddle: Your Honor, these gentlemen are accurately predicting that I am about to make some inquiries about the Callanan Fund that was collected the same way at the same time, and this is the question that came up yesterday in my opening statement.

I think that this is what they are doing, and we are proposing to ask him about the collections he made of that fund during this period of time.

I think it is very relevant, and I believe that the evidence and the trend of the testimony abundantly demonstrates the propriety of our exploring that as a course of conduct and as a pattern of action.

The Court: What is your objection?

Mr. Randall: Your Honor, our objection is that this is wholly immaterial and irrelevant. The Callanan Gift Fund [268] was collected at a separate time. It had absolutely nothing to do with political contributions. This is a conspiracy to make political contributions by the Local itself. There isn't a question none of that money went for polit-

ical contributions, had nothing to do with it, and it is wholly immaterial, and I think it is highly prejudicial, because it will show that a considerable amount of money was contributed by the members of the Local and given to Mr. Callanan. I don't see what it has to do with the lawsuit.

The Court: I will overrule the objection. It is used to show the mode of collection and the course of collecting it.

(Thereupon, the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Sir, are you familiar with the fund that I believe was called the Callanan Gift Fund? A. Yes, sir.

Mr. Daly: May the record show our continuing objection to all of this examination?

The Court: I have overruled the objection, so that I think you have preserved your record by making the objection to it, and I assume that your next series of questions will be directed to that.

Mr. Riddle: It will, Your Honor.

[269] The Court: So the objection will go to the questions pertaining to that, and the rulings will be the same.

Mr. Riddle: All right. As a collector during the time you testified to, did you have occasion to receive monies into the Callanan Gift Fund?

A. Yes, sir.

Q. Where did you receive them? A. By that time, sir, I believe I was downstairs in our own office in the same building, but we'd run two offices downstairs at this time.

Q. Well, can you explain that for us, the two offices downstairs? A. Well, they got all this new machinery upstairs, sir, and they had to make use of the room where

the existing classrooms were, and they made this all into the Welfare, the whole top floor.

Q. The whole second floor? A. Yes, So they had, in fact, the executive director's offices downstairs, and he moved upstairs, and then we took over his offices downstairs.

Q. You mean the Voluntary Fund moved from upstairs downstairs about that time? A. Yes, sir, I can't remember the date, sir, how it coincided, or anything.

[270] Q. Then it is your testimony that at the time you were collecting for the Callanan Gift Fund you were doing business downstairs instead of upstairs? A. Yes, sir.

Q. Now, how was the Callanan Gift money brought to you? A. In more or less the same manner that the Voluntary Fund had been brought to me.

Q. By the same people? A. Well, there were variations, I imagine. They changed constantly as jobs changed.

Q. Did you have this sheet or form of the type we were talking about that theretofore was called, "Pipefitters Voluntary Fund"? Did you have a sheet just like this? A. It was very similar to it, sir, but it wasn't exactly.

Q. The heading was different, was it not? A. I believe it was changed, but I can't be sure. The heading was different; yes, sir.

Q. All right. But the columns were the same? A. I believe that was changed. It seems to me it was changed. I'd have to check them though.

Q. But over on the right-hand corner there was figures? A. Yes, sir.

Q. Showing the amount paid by each member whose name appeared on each sheet? [271] A. Yes, sir.

Q. During the time that you were receiving the Callanan money, were any payments at that time received into the Voluntary Political Fund? A. Yes, sir. There was an overlap of when the Callanan Gift Fund was voted in by

the membership, and some people, of course, owed to the Voluntary Fund, and I tried to keep it as separate as I could. In other words, if they wanted to come in and pay for something they owed before the Gift Fund, but came in after it started, I tried to keep that money as well as I could, and I believe I did, separate, and then after the Gift Fund came in, or it was stopped, there was an overlap there also.

Q. Let me see if I understand you correctly there. Did you say there was a meeting of the members of the Union? A. Yes, sir.

Q. And that meeting was about setting up the Callanan Gift Fund? A. Yes, sir.

Q. Did you attend that meeting? A. Yes, sir.

Q. Where was it held? A. I believe it was at the Electricians' Hall.

Q. About how many people were there? [272] A. A rough guess, six, seven hundred people; something like that.

Q. Was there any vote taken at that meeting to suspend the Voluntary Political Fund while the Callanan Fund was operating? A. Yes, sir, I believe this was done.

Q. So at this meeting then, if I understand your testimony correctly, it was voted to suspend the Voluntary Fund, Political Fund? A. Yes, sir.

Q. And institute in its place the Callanan Fund? A. I believe this is how it was; yes, sir.

Q. All right. And what about the rates or the assessments for the Callanan Fund as compared to the other Fund? A. I beileve the motion was made to carry it on, the same as the Voluntary Fund.

Q. All right. So if the assessment was $2.00 a day for out-of-towners, that would continue right on through the Callanan period? A. Yes, sir, I believe this was right.

Q. And if it was $1.00 a day for the 562's, that would continue right on through? A. To the best of my memory, yes, sir, I believe it was.

Q. Now, then, if I understand your testimony correctly, [273] at the time that you suspended—let me withdraw that.

At the time that you initiated the Callanan Fund, that there were some people who still owed for back payments on the Voluntary Fund, or Political Fund? A. Yes, sir. There was a date. Now, I can't remember what the date was, and I don't remember if it was the date the Callanan Fund was set up, but people would come in and say, "Well, I owe so much from such and such a date," and I said, "Well, a portion belongs to Voluntary Fund and a portion belongs to the Gift Fund," or whatever it might have entailed.

Q. You are saying that members would come in to you and say, "I owe back assessments for the Political Fund"? A. Well, usually they'd come in, they'd say, "I haven't paid since such and such a date," and it was up to me to find the cutoff point and try to keep them separate.

Q. Was it up to you to try to figure out how much they owed in arrears? A. Some people kept records of their own, sir, and most of them said, "I owe for so many days," and then I would figure it up for them, and some would say, "I owe so much money," or whatever it might be.

Q. Was it often that people asked you how much they owed you in arrears on that Political Fund, the Voluntary Fund? A. Not often. It was individuals that came in, and some [274] of them, well, it varied on what they wanted to pay, or what they thought they owed.

Q. Well, they knew how much it was. They knew whether it was $1.00 a day or $2.00 a day?

Mr. London: I will object to the form of the question, Your Honor.

The Court: It will be sustained.

Mr. Riddle: All right.

(Thereupon Government's Exhibit No. 71 was marked by the reporter for the purpose of identification.)

Q. Sir, I'll show you what's been marked Government's Exhibit 71, and ask you if that is the type of the collection sheet for the Callanan Gift Fund that was used? A. Yes, sir.

Q. This is the type of sheet that was handed in to you with the money? A. Yes, sir.

Q. Now, was the Callanan Gift money paid to you in cash or by check? A. Mostly cash, but checks also; yes, sir. It was made out to the Callanan Gift Fund by check.

Q. Now, sir, looking at Government's Exhibit 71, and at the date, can you tell us if the first name on the list, Don Gilmore, was a member of 265, or an out-of-towner?

[275] The Court: You mean 562?

Mr. Riddle: I mean 562. Excuse me.

A. Yes.

Q. And which one was he? A. He is a 562 man.

Q. All right. I show you the name appearing beside No. 11, Ed Burns. Can you tell by looking at this Government's Exhibit No. 71, and tell the Court and jury whether or not he was a member of Local 562, or an out-of-towner?

Mr. Daly: I will object to that. I think it calls for a conclusion on the part of the witness.

The Court: It will be overruled.

The Witness: Normally he would be an out-of-towner, but sometimes, like on there being, see, there is not any hours, and to know for sure, I would say he's probably an out-of-towner.

Q. And what do you base that conclusion on, sir? A. Because of the rate of pay that's paid.

Q. And his rate of pay, according to this sheet, is—— A. Ten dollars.

Q. And the other rate of pay is what? A. Fifty cents a day, $2.50.

Q. Well, during the period of the Callanan Gift Fund, what was the rate of pay for out-of-towners? A. Two dollars a day.

[276] Q. Two dollars a day? A. Yes, sir.

Q. What was the rate of pay during the Callanan Gift Fund period for 562 members? A. Fifty cents a day.

Q. Fifty cents a day. Now, sir, when you received the —I am still talking about the period of time that the Callanan collections are coming in, that fund—what did you do with that cash? A. I made up the deposits, and I gave the sheets and money to Mr. Ed Steska.

Q. You gave the sheets and the money both to Mr. Ed Steska? A. Yes, sir.

Q. You testified that you had been filing heretofore the Pipefitters Voluntary Fund sheets in your office? A. Well, Mr. Steska was the committee of the Callanan Gift Fund, and he was in charge of the whole operation.

Q. Do you know at that meeting Mr. Steska was appointed? A. I believe the same meeting that the motion was made to make the Callanan Gift Fund.

Q. The same meeting that the Voluntary Political Fund was cut off and the Callanan Fund was instituted? A. I believe that's right; yes, sir.

[277] Q. Do you know who presided at that meeting? A. I don't remember; no, sir.

Q. All right. Sir, how long did the Callanan Gift Fund stay in effect or supersede the Voluntary Political Fund? A. I'd have to check the records. I think it was about

two and a half months, or something like that. I'd have to check the records.

Q. Do you know at what time the Callanan Gift Fund was to be cut off? A. I believe it was at the—no, sir, I couldn't tell how that was approached.

Q. Was the cutoff date tied to a time or date, or to an amount of money? A. I believe that was left up to the committee of Mr. Steska. I'm not sure though.

Q. Sir, did you receive any instructions from anyone as to when you should cut off the Callanan collections and reinstitute the other collections? A. I believe that was another meeting, sir.

Q. All right. Where was that meeting held? A. I imagine at the Electricians' or Teamsters, but I think it was Electricians' hall.

Q. Did you attend that meeting? A. Yes, sir.

[278] Q. And do you recall what was decided at that meeting? A. Verbatim, I can't remember, sir.

Q. Well, just in essence or substance, what was it? A. It was decided to end the Callanan Gift Fund.

Q. All right. Who made that recommendation? A. I imagine it was Mr. Steska.

Q. All right. Were there any motions made or—— A. I couldn't remember, sir.

Q. Do you recall if it was decided at that meeting to reinstitute the old political, or Voluntary Political Fund? A. No, sir, I can't remember if it was done at that time.

Q. But it was reinstituted right after that? A. Yes, sir.

Q. All right. Well, sir, was there any hiatus, or delay, or period of time when no collections were coming in for either the Callanan or the Voluntary Political Fund? A. No, sir, because, like I said, there was an overlap, but whether there was a period of time—many people came in with the Callanan Gift Fund the same as, after it ended

the same as they came in with the Voluntary Fund before it started. There was an overlap there, but I don't believe there was any breach of time.

Q. Sir, do you know if the amount of money you were [279] receiving through that period remained constant? Or about constant? A. Yes, sir.

Q. That is before the Callanan Fund began, and then after it quit? The amount of collections remained about the same? A. I'd have to check the records, but I would say it was approximately the same.

Q. Sir, did you have any responsibility for distributing a card that was styled a Gift Fund? A. Yes, sir.

Q. All right. What did you do with respect to the distribution of those cards? A. I distributed them to various people that came in. If they had mailed them in, mailed them, mailed the check in, I'd take their address and mail them a Gift Fund card if they wanted to mail it back signed.

Q. Sir, were you given a great big stack of these Gift Fund cards? A. There was a package, sir.

Q. Who gave that package to you? A. I imagine it was delivered to the office. I mean it was delivered to the office, but I don't believe anybody actually gave it to me. If it was, it was Mr. Steska.

Q. Well, delivered,—when you say to the office, now [280] which one of the offices are you talking about? A. The Volunteer office.

Q. And was it in a large package? A. No. I think they come—yes, sir, I think there's four small packages in a package about, approximately twelve inches long, I guess.

Q. And you say, is it your testimony that you don't remember for sure who it was, but you believe it was Mr. Steska that brought them to you? A. I say I think they probably were delivered right to my office, but if anyone gave them to me, it would have had to be Mr. Steska.

Q. Who told you what to do with the cards after they were received, if anyone? A. Well, I took it for granted they were going to be signed; to distribute them like I did. Any business that was transacted with the Gift Fund was with Mr. Steska, but I can't remember just how it was transacted.

Q. At this time, Mr. Steska, was he president of the Union? A. Yes, sir.

Q. All right. Now, sir, these Gift Fund cards,—I'll ask the reporter to mark this Government's Exhibit 72.

(Thereupon, Government's Exhibit No. 72 was marked by [281] the reporter for the purpose of identification.)

Q. I am handing you what's been marked Government's Exhibit 72, and ask you to examine that and see if that is an accurate copy of the cards that you just testified about? A. Yes, sir.

Q. And which you distributed? A. Yes, sir.

Q. All right. Now, sir, in distributing these Gift Fund cards, did you mail any of them? A. Yes, sir.

Q. Where did you mail them? A. To the address of people that were mailing checks in regularly and never coming into the office.

Q. How many people mailed checks in regularly that didn't come into the office? Give us the approximate number. A. I'd say approximately seventy-five a week; in that neighborhood.

Q. About seventy-five a week sent in regular checks? A. Yes, sir, at various times. Not the same seventy-five every week, but I imagine I collected about seventy-five checks a week.

Q. All right. So that those seventy-five you mailed a Gift Fund card? A. Yes, sir.

[282] Q. All right. Did you write them a letter? A. I believe there was a form letter I put in with the card; yes,

sir. I can't remember the form letter. Mr. Steska gave it to me. I believe it was what was adopted at the meeting of the membership.

Q. You say the form letter was given to you by Mr. Steska? A. Yes, sir.

Q. Who was it signed by? A. Mr. Steska.

Q. All right. Now, that accounts for seventy-five of them. How did you distribute the others? A. Various people that collected on the jobs, I gave it to them. Some people they had on the job. Or if somebody was starting a job, I gave them cards to give to people that would then come on the job.

Q. Did you hand-deliver these? That is, to the foremen or stewards? A. Mostly; yes, sir.

Q. Did you hand-deliver it to them in your office, or out on the job? A. In my office.

Q. When you hand-delivered them, did you tell them anything, or give them any instructions [283] A. No, sir. It was pretty self-explanatory after the meeting and everything. They all knew what should be done with them.

Q. Sir, let me ask you this question: Did you specifically tell them—and you can tell the jury whether you did or not—to have the membership sign them and return them to you? A. Well, yes, sir, but they had been with these cards for many times, for many years, and they knew——

Q. This should be done? A. ——this should be done by anyone who wanted to sign them.

Q. When the cards were signed, were they returned to you? A. Yes, sir.

Q. After they were signed and returned to you, what did you do with them? A. I put them in the filing cabinet, and then I gave them to Mr. Steska.

Q. Sir, do you know how much money was collected into the Callanan Gift Fund? A. No, sir, I don't.

Q. Was the amount collected ever audited, to your knowledge? [284] A. Not to my knowledge, sir, but, again, I say that was Mr. Steska. I handed him the deposits and the sheets, and he kept records of how much was there, and I really had no idea how much was in the fund.

Q. Do you know, as a matter of fact, whether or not the proceeds of this Gift Fund project were handed over to Mr. Callanan? A. I imagine they were, sir, but I don't have any idea when, or anything. That was all Mr. Steska.

Q. Sir, was it your understanding that that was the purpose for the Fund, to give the proceeds to Mr. Callanan? A. In a general way, yes, sir, it was——

Q. All right. I just have one additional question, Your Honor.

(To the reporter) Would you mark this?

(Thereupon Government's Exhibit No. 73 was marked by the reporter for the purpose of identification.)

Q. Sir, I show you what's been marked Government's Exhibit No. 73, and ask you if you can identify that? A. Yes, sir.

Q. And what is it? A. It is a Voluntary Contribution card.

Q. Now, these Voluntary Contribution cards, where were they kept? That is, in the Fund office? [285] A. I had them on a stack in the corner of the room.

Q. A stack in the corner of the room? A. Yes, sir.

Q. Where did you keep the Gift Fund cards when they came in? A. I had them also in another stack. They were just——

Q. Just right out on the floor? A. Against the wall; yes, sir.

Q. Against the wall? A. Yes.

Q. Were they in alphabetical order? A. Oh, I am sorry, sir. I misunderstood you. I thought you meant when they came in from the printer?

Q. When they came back after they were signed by the members? A. No, sir, they weren't in alphabetical order.

Q. But those were the ones that you stacked? A. These I put in a file, and when I got a group of them I gave them to Mr. Steska when they came off the jobs, but to my knowledge, I didn't put them in alphabetical order.

Q. Just in order that the Court and jury is clear on this, let me ask you about the Gift Fund cards. Did you give them all to Mr. Steska? A. The signed ones; yes, sir.

[286] Q. What about the Voluntary Contribution Agreements having to do with the Voluntary Political cards? What did you do with those cards? A. The signed ones, sir?

Q. Yes. A. I had them in my filing cabinet.

Q. All right. Sir, are you related to Mr. Callanan? A. Yes, sir.

Q. What is your relationship ? A. He is my father-in-law.

Q. You are married to his daughter? A. Yes, sir.

Q. Thank you. Just a second. I do just have one additional question.

During the period of time that you were working for the Callanan Gift Fund there that two and a half months, or so, who paid you? A. The Welfare Fund, sir.

Q. The Welfare Fund? A. Yes, sir.

Q. That's the Welfare Fund of the Union? A. Yes, sir.

Q. Who paid you as soon as the Callanan Fund was over with? [287] A. I was still on the Welfare payroll, sir. I don't remember the dates of when I transferred

over to the Voluntary Fund. I collected the Callanan Gift Fund on the same basis as I collected the Voluntary Fund, at night and on Saturdays.

Q. While you were still on the payroll of the Welfare Fund? A. Of the Welfare; yes, sir.

Mr. Riddle: Thank you, sir.

[288] **Cross-Examination**

By Mr. Randall:

Q. Mr. Beck, did you attend the meeting that was held of the membership of the Voluntary, Political, Charitable, etc., Fund that were held on Sunday at the Electricians' hall? Did you attend some of those meetings where the members all came in, and the candidates appeared, and the recommendations discussed, and that sort of thing? A. Yes, sir.

Q. And you attended the meetings that were held of the membership of the Voluntary Fund when they terminated it, and later opened up the other fund for Mr. Callanan that short period of time? A. Yes, sir.

Q. And did you attend the meeting of the members of the Voluntary Fund two or three months ago at which they voted 743 yeses and 5 noes to continue the Voluntary Fund? A. Definitely, sir.

Q. It was a secret ballot of yes and noes? A. Yes, sir.

Q. Now, and the members of the Voluntary Fund are the people who make contributions to it; isn't that correct? A. Yes, sir.

Q. Now, this card, Voluntary Contribution card, is in [289] effect a pledge to pay a certain amount of money into the fund?

Mr. Riddle: I will object to that as calling for a conclusion. That would be a legal conclusion.

The Court: It is an interpretation of the interrogator. I will sustain the objection.

Mr. Randall: Well, Mr. Beck, this card says, does it not, that they agree to contribute a certain amount of money? Doesn't it?

A. Yes, sir.

Q. Then it says that the contributions are voluntary, and that "I may revoke this agreement by written notice to that effect at any time"; isn't that correct? A. Yes, sir.

Q. And after the Voluntary Fund, the contributions had been terminated into it, the Fund continued to exist so far as expenditures were concerned, didn't it, sir? A. Yes, sir.

Q. And some of the people came in and said, "I am not fully paid up according to my agreement" and they continued to make payments? A. Yes, sir.

Q. And, of course, there were some people at work that didn't sign these agreements to make contributions; isn't that [290] correct? Or wouldn't you know? A. I wouldn't have any idea, sir.

Q. I see. Now, Mr. Beck, do you know the rate of pay, not counting the money, ninety-two dollars and fifty-seven and a half cents that goes to the Welfare Fund, what is the rate of pay of a pipefitter at the present time? Do you know? A. I believe it is five sixty-two and a half.

Q. Five dollars sixty-two and a half an hour? A. Yes, sir.

Q. And there's two dollars seventeen and a half cents that goes to their Welfare Fund? A. Yes, sir.

The Court: What was it? Five dollars what?

The Witness: Five sixty-two and a half, but I'm not sure of that, sir. It's just been changed in June or July.

The Court: Have you concluded?

Mr. Randall: Yes, I have, Your Honor.

The Court: All right. Any more redirect?

Let the record show there was no requests for a Jenks statement.

Mr. Riddle: I believe the Government has no further questions of this witness.

The Court: Step down. You are excused.

(Witness excused.)

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[291] **JOHN J. BUCKLEY,**

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. State your full name, please, to the Court and jury. A. John J. Buckley.

Q. And by whom are you employed? A. I am a special agent with the Federal Bureau of Investigation.

Q. Are you assigned to the St. Louis office? A. Yes, sir.

Q. How long have you been here in the St. Louis office? A. I have been here since September, 1948.

Q. Sir, as a part of your formal training, did you specialize in any particular field? A. Yes, sir.

Q. What field, sir? A. I specialize in the accounting field.

Q. What education or training have you had in the accounting field? A. I have a degree in 1947 from the Bentley School of Accounting & Finance, in Boston, Massachusetts. In addition to that, I have taken advanced accounting courses from time to time in Washington with the F. B. I.

[292] Q. Sir, have you had occasion to practice your accounting training and profession since you have been with the F. B. I.? A. Yes, sir.

Q. Sir, have you had an occasion to examine certain records that were delivered to you by the United States Attorney's office? A. I did, sir.

Q. And what records did you examine, at our request? A. I examined the records of the Pipefitters Voluntary Fund, Pipefitters Local 562, and an account known as the Callanan Gift Fund.

Q. All right. Sir, with respect to the records that you examined, I just merely call your attention to the Government's Exhibits 1 through 5, and the checks, I believe, which would be 6 through 59, and ask you if those records have been examined by you, among others? A. Yes, sir.

Q. Sir, based upon your examination of these records, have you made certain calculations and conclusions with respect to receipts and disbursements for the years 19 and 63, '64, '65 and '66, from the Voluntary Political Fund? A. Yes, sir, I have.

Q. All right. Sir, directing your attention to the year [293] 1963, can you tell the Court and jury the amount of receipts into the Voluntary Political Fund for that calendar year? A. Yes, sir. For 1963, the total receipts were $286,029, rounded off to the nearest dollar.

Q. I see. What about for the year 19 and 64? A. In 1964, the total receipts were $289,783.

Q. Sir, with respect to '65? A. In 1965, the total receipts were $415,963.

Q. And for the year '66? A. 1966, the total receipts were $239,211.

Q. All right, sir, and did you total the receipts for those four years? A. I did, sir.

Q. What is that total? A. The receipts for the four years totaled $1,230,986.

Q. Sir, I will show you what has heretofore been marked as Government's Exhibit No. 60, and ask you to examine it, if you would, please? A. Yes, sir.

Q. Sir, upon examination of this, I will ask you if it fairly and accurately reflects your testimony, based upon your conclusions and calculations from the records you have just referred to? A. It does, sir.

[294] Mr. Riddle: Your Honor, the Government asks that its Exhibit No. 60 be received into evidence.

Mr. Daly: No objection.

The Court: All right. It will be received.

(Whereupon Government's Exhibit No. 60 was received in evidence.)

Q. Sir, with respect to the examination, did you examine the records, checks and other data and material, to determine the amount of contributions or expenditures to candidates for federal office? That is, President, Vice President, Senator or members of Congress? A. Yes, sir, I did. On behalf of those candidates that you mentioned. Yes, sir, expenditures on behalf of them.

Q. Sir, for the year 1963, was any such contributions for such candidates made? A. No, sir.

Q. For the year 1964, were contributions or expenditures for such candidates made? A. Yes, sir.

Q. How much? A. A total of $97,347.

Q. All right. And for the year 1965 were contributions made for such persons and to such purposes? A. Yes, sir.

[295] Q. How much? A. $8,919.

Q. And for the year 1966, how much, and for such purposes? A. $45,146.

Q. Did you make a total of those contributions for federal political purposes? A. Yes, sir, I did.

Q. And what is that total? A. The total is $151,412.

Q. I hand you, sir, what has been marked Government's Exhibit No. 61, and ask you to examine it and tell the Court whether or not it fairly and accurately represents the results of your conclusions and computations? A. Yes, sir, it does.

Mr. Riddle: Your Honor, the Government offers into evidence its Exhibit No. 61, and asks that it be received.

Mr. Daly: No objection.

The Court: All right. It will be received.

(Whereupon Government's Exhibit No. 61 was received in evidence.)

Q. (By Mr. Riddle) Now, sir, in connection with your examination and work, did you examine certain records dealing with the Callanan Gift Fund? [296] A. I did, sir.

Q. And did you make any conclusions or decisions as to the total amount received into that Fund?

Mr. Daly: At this time, Your Honor, we'd like to renew our objection to this interrogation.

The Court: It will be overruled.

The Witness: I did, sir.

Q. (By Mr. Riddle) How much was received into that Fund? A. I have the figures—I believe you have them there.

Q. Do you want to come down and get them?

(The witness stepped down from the witness stand to hand papers to Mr. Riddle.)

Q. (By Mr. Riddle) I'll hand you your work sheets that you have just identified. Can you, by examining those, tell the Court and jury what the total amount received in the Callanan Gift Fund was? A. The Callanan Gift Fund total receipts from June through December, 1966, were $144,447.20.

Q. Now, sir, did you determine the period of time that receipts came into the Fund? A. Yes, sir.

Q. Callanan Gift Fund? A. By the bank account; yes, sir.

[297] Q. All right. And for the month of June, how much was received? That is, June of 1966? A. $25,974.88.

Q. And July of 1966? A. $36,603.50.

Q. And August? A. $28,414.90.

Q. And September? A. $35,695.45.

Q. And October? A. $16,124.47.

Q. And for November? A. None.

Q. And for December? A. $1634.

Mr. Riddle: The Government has nothing further of this witness, Your Honor.

Mr. Randall: Your Honor, I wonder if they have a statement of the grand jury testimony of this witness.

Mr. Riddle: We don't have it here with us. We can get it.

The Court: Well, do you have any idea about how many pages it is?

Mr. Riddle: Twenty or so pages, Your Honor.

[298] The Court: Well, why don't we adjourn then for lunch, and we will give them fifteen minutes for that, and an hour for lunch, so get back at a quarter to 2:00.

Members of the Jury, remember the admonition that the Court has—and alternates—remember the admonition the Court has given you heretofore.

(Thereupon at 12:27 p. m., court was in recess for lunch until 1:45 p. m.)

Wednesday, September 4, 1968.
Afternoon Session.

JOHN J. BUCKLEY,

having previously been sworn, resumed the witness stand, and the further following proceedings were had before the jury:

The Court: Are you going to conduct this cross-examination?

Mr. Randall: Yes, Your Honor. May I proceed?

The Court: Yes.

Cross-Examination.

By Mr. Randall:

Q. Mr. Buckley, on direct examination you testified that you examined the records of Local 562, the Voluntary Fund and the Callanan Gift Fund; is that correct? A. Yes, sir.

[299] Q. Did you have those records in your possession, sir? A. No, sir. They were in the possession of the United States grand jury.

Q. Well, they were here in this building? A. Yes, sir.

Q. In the possession of the Government? A. Yes, sir.

Q. Do you remember what period of time did you have those records, sir? A. I believe the records began to come in on about October 19, 1967.

Q. And you kept them until August 9th of this year; is that correct? A. I believe so; about that time.

Q. And they were delivered by the various officers of those organizations pursuant to a grand jury subpoena? A. Yes, sir.

Q. Now, did you have the collection sheets, these various —we have had one in evidence—the collection sheets for the Voluntary Fund? Did you have those? A. Yes, sir.

Q. And did you have the checkoff lists of the Union itself? A. Yes, sir.

[300] Q. You had many, many records? A. Yes, sir.

Q. They were returned to the officers of the organization August 9th of this year; is that correct? A. Yes, sir.

Q. And you photostated and kept copies of a lot of those? A. We did, sir; yes, sir.

Q. About 45,000 of them? A. I think that's about right; yes, sir.

Q. And some of these records that have been presented are some of those 45,000 that you collected? A. That's correct, sir.

Q. Now, during this period of time of approximately a year that you had the records, did you audit the books of the Voluntary Fund? A. No, sir, I did not.

Q. Now, did you undertake, during that period of time, to determine whether or not all of the members of Local 562 and the non-members who worked under their jurisdiction was making contributions to the Voluntary Fund? A. We attempted to determine that Mr. Randall, but we were not able to.

Q. You were unable to? [301] A. Yes, sir.

Q. There was no way from these records, no practical way, that you could determine who was paying and who wasn't paying? Or whether all of them were paying? A. Whether all of them were paying. There was no practical way you could determine it.

Q. And if there were some missing, there was no practical way of taking the records of the Local, the Voluntary Fund, the Welfare Fund, and determining who was not paying, was there? A. No, sir, we did not find one.

Q. It was just the state of the records didn't permit that? A. That's correct.

Q. And, sir, would you explain to us why the state of the records did not permit this determination? A. Well, the Voluntary Fund records were kept on a daily or weekly basis, a separate sheet per each job, which listed the contributors to the Fund, and once this record had been totaled and posted, and the entries made in the cash receipts book, there was no auxiliary record maintained for each individual member, so that in order to determine what a member had given over a period of four years, it would be necessary for you to practically review every contribution sheet.

[302] Q. During the whole four years? A. That's correct, sir.

Q. And that is due to the fact that sometimes the checkoffs for one year fell over into another year, and the same thing—— A. No. That is due to the fact that there was no record kept for any single member where you could go to his card and say John Jones gave so much over the years.

Q. Well, sir, why was it impossible to take the contributions sheets, say, for a particular week, and the checkoff sheets that the employers used in order to make the assessments and dues, why was it impossible to correlate those together? A. Well, then you get to the problem you mentioned, Mr. Randall, that sometimes the checkoff sheets cover one employer who will have three or four jobs going, and all of his employees will be listed on that sheet, but the Voluntary Fund contribution sheets will, maybe, encompass a half dozen sheets from different jobs.

Q. In other words, to sum it up, the contribution sheets were in no way correlated with the checkoff sheets—— A. That is true; yes, sir.

Q. ——which showed their working days. Now, Mr. Buckley, you have a couple charts over here. I might start

first with Government's Exhibit No. 60, which shows the, as I understand [303] it, the money that was collected or contributed to the Voluntary Fund during a four-year period; is that correct? A. Yes, sir.

Q. And where did you get those figures? A. I got those figures from the yearly summary sheets in the cash receipts journal.

Q. You got them from these exhibits here that were in the early years—I believe these are Exhibits 1, 2, 3 and 3? A. That's correct, sir.

Q. And the early years were kept by Pat Stiefelman, who testified this morning; is that correct? A. Yes, sir.

Q. And you made no attempt, as I understand it, to start with those figures and trace the money, cash, or checks, or whatever it was, to determine that all of it was disbursed according to those records? A. I made no attempt to determine that this money was disbursed, that all of it was disbursed or accounted for. Is that what—

Q. Accounted for? A. Yes. I made an attempt to do this, but I was unable to do so.

Q. Why were you unable to trace those receipts, starting with these receipts ledgers, to the disposition of the money? [304] A. Because for a period of time a portion of the receipts were deposited in cash in a safe deposit account of some type, and this is not a figure that is susceptible to verification.

Q. Mr. Buckley, they were entered in these books though? A. Yes, sir.

Q. Now, I am not asking you about attempting to count the money, but did you make an attempt to start with these books, which had the entries of both cash and checks, and trace it all out to see if it was properly accounted for? A. Yes, sir.

Q. And it was, wasn't it? A. Yes, sir. I found no evidence that it was not.

Q. You found no evidence that any of the money had disappeared? A. Well, as I say, I am not able to make a statement with respect to the money that was in the safe deposit vault at any time.

Q. Well, starting with the cash that you report over there on your exhibit, you were able to make a statement that, assuming that that was the receipts, that it was properly accounted for? A. That's right.

Q. Now, I might take your other exhibit. Now this [305] exhibit, Government's Exhibit 61 is the checks that you testified on direct out of this total of $1,230,986, $151,412 was contributed or expended in federal elections; is that right? A. On behalf of federal candidates; yes, Mr. Randall; yes.

Q. And, as a matter of fact, those figures are the total of these checks that were introduced into evidence, being Government's Exhibits 6 through 59; isn't that true, sir? A. With two exceptions, Mr. Randall. There is an item in the totals, in 1964, of $397.38, and may I read the rest in? It is a check to the Handy Liquor Store, and I did not make a copy of that check.

Q. Well, you mean you put in three hundred-some dollars that was a check to the Handy Liquor Store, and you include that as a part of the contributions? A. Yes, sir.

Q. But you saw the checks? A. I saw the check, and I saw the entry in the ledger, which led me to conclude that there was a federal political contribution.

Q. But you did not make a copy of that? A. Inadvertently, I didn't make a copy of the check.

Q. You just failed to? A. Yes. And there is one other item. It is a cash contribution on June 8, 1965, of $800. The notation is [306] "Inaugural Ball".

Q. Was there a check for that? A. No. That was a cash entry, and that is in the total.

Q. I see. And you found this $8,000 expended in cash for the inaugural ball? A. Eight hundred.

Q. Eight hundred. I am sorry. Eight hundred? A. Yes, sir.

Q. And you found that in the books? A. Yes, sir.

Q. And what was the date of that expenditure? A. I believe it was June 8, 1965.

Q. And that was, you concluded that that related to the inauguration of President Johnson; is that it? A. Yes, sir.

Q. And what caused you to conclude that the $300 item for liquor related to politics? A. Because the entry in the cash disbursement journal says, "Handy Liquor Store, Symington Testimonial Dinner."

Q. I see. In other words, you concluded that that was an expenditure for liquor used at a testimonial dinner for Senator Stuart Symington? A. That was my conclusion; yes.

Q. Now, if I could give you these checks. [307] A. All right, sir.

Q. Mr. Buckley, I would like to run through them. Let's start with No. 6. Who was the payee? Would you give me the amount and the payee of that check, sir? A. Government's Exhibit No. 6 is a check dated February 21, 1964, in the amount of $5,000, being payable to Dillon Ross, Treasurer, Citizens Committee for Symington.

Q. And I gather that you concluded that that was an expenditure to a committee that was advocating the election of Senator Symington; is that right? A. That was my conclusion; yes, sir.

Q. And the next one, please? A. Government's Exhibit 7 is a check dated February 21, 1964, in the amount of $2,000, payable to Senator Symington Testimonial Dinner.

Q. And you concluded that that was an expenditure in connection with this testimonial dinner for the Senator? A. Yes, sir.

Q. That was after his election, or before his election? A. I don't recall now at this time whether Senator Sym-

ington was a candidate in '64 or not. I'd have to check, Mr. Randall.

Q. Did you determine whether or not that expenditure was in connection with an election, or just in an attempt to honor [308] the Senator? A. It was an expenditure on behalf of a candidate for federal office. That's the way I made the conclusion.

Q. You thought he was a candidate at that time? A. Yes, sir.

Q. All right. The next one? A. Government's Exhibit No. 8 is a check dated February 29, 1964, in the amount of $2,000, payable to Senator Symington Testimonial Dinner.

Q. And that's the same as the last one? A. Same conclusion; yes, sir.

Do you want me to continue?

Q. Yes. I'd like for you to go through all of them, Mr. Buckley. A. Government's Exhibit No. 9 is a check dated March 11, 1964, payable to the Dem. Congressional Dinner Committee, for $1,000.

Q. Now, what candidate was that committee supporting? Do you know? A. I don't, but I say that was the basis of my decision, that it was a Democratic Congressional Dinner Committee, and it was in connection with a federal election.

Q. In other words, it was in support of Democratic candidates for Congress? [309] A. Yes, sir. Congressional candidate.

Q. The next one? A. Government's Exhibit No. 10, is a check payable to Morris A. Shenker for Political Expenditures and Contribution, dated May 8, 1964, in the amount of $5,000.

If I may explain on this item, this whole $5,000 is not included in the disbursements.

Q. I see. That's just gotten mixed in among—— A. No, no. If I may continue. I interviewed Mr. Shenker.

Q. I see. Well, let's don't give his testimony? A. No, but that's—it was a portion of that——

Mr. Riddle: If it please the Court, he should be allowed to answer the question, complete his answer.

The Court: Well, you asked him about the check, so—all right, you may conclude your answer.

Mr. Randall: All right.

The Witness: I interviewed Mr. Shenker on December 27, 1967, at which time he said that a portion of these funds had been spent in the amount of $2,850, for the following purposes:

$1,000 on May 13, 1964, Democratic National Committee.

$200 on May 18, 1964, for Congressman Lenor K. Sullivan Committee.

$1,000 on June 3, 1964, for the Citizens for [310] Symington Committee.

$150 on October 26, 1964, the McClanahan for Congress Committee.

And $500 on October 30, 1964, to the Citizens for Symington Committee.

Q. Now, Mr. Buckley, who is Mrs. Sullivan? A. Mrs. Sullivan is the United States Congresswoman from the State of Missouri.

Q. Is she a Democrat or a Republican? A. She is a Democrat, I believe, sir.

Q. I see. No, Mr. McClanahan, who was he? A. I don't really know who he was at this juncture, but I have McClanahan for Congress.

Q. Was he the Democratic nominee for Congress? I don't know whether he got the nomination or not. He was the Democratic nomination for Congress, wasn't he? A. I don't know that, Mr. Randall.

Q. You just concluded, because it said—— A. Yes, sir.

Q. What made you think—— A. McClanahan for Congress Committee.

Q. All right. The next one? Government's Exhibit No. 11 is a check dated May 18, 1964, payable to Richard Maguire, Treas. Dem. Nat. Com., for [311] $1,000.

Q. All right. And the next one? A. Another check dated May 18, 1964, payable to Richard Maguire, Treas. Dem. Nat. Com., $1,000.

Q. The next one? A. Check dated—Government's Exhibit No. 13, a check dated May 19, 1964, for $500, payable to Harris for Senate Club.

Q. Do you know who Mr. Harris was? A. Mr. Harris was a candidate for United States Senate from the State of Oklahoma.

Q. Was he a Republican or a Democrat? A. I do not know that, sir.

Q. All right. The next one? A. The next one is a check, Government's Exhibit 14, check dated May 19, 1964, for $1,000, payable to Lenor K. Sullivan Finance Committee.

Q. That is the same Congressman you previously referred to? A. It is Congresswoman Sullivan.

Q. Congresswoman. Pardon me. And she is from the St. Louis area; is that correct? A. Yes, sir. Government's Exhibit 15 is a check dated May 25, 1964, in the amount of $1,500, payable to Karsten Committee for Congress.

Q. Who is Mr. Karsten? [312] A. Mr. Karsten is the former Congressman, and at this time was a Congressman from the Missouri area. He was a Democrat.

Check No. 16, check dated May 25, 1964, in the amount of $1,500, payable to Icord Committee for Congress. And Mr. Icord was a Congressman from Missouri.

Q. Down in southeast Missouri? A. Yes, sir.

Q. He is a Democrat too, isn't he? A. Yes, sir, I believe so.

Check No. 17, dated May 25, 1964, in the amount of $1,500, payable to Price Committee for Congress.

Q. Mr. Price is a Congressman over in Illinois? A. From Illinois.

Q. Across the river? A. Yes, sir.

Q. He is a Democrat, isn't he? A. Yes, sir.

Check dated May 25, 1964, Government's Exhibit 18, for $1,000, payable to the Democratic National Committee.

Q. All right. The next one? A. Government's Exhibit 19 is a check dated August 18, 1964, for $100, payable to the Mel Price Testimonial Dinner. And that is Mr. Price that we mentioned before.

[313] Q. Same Price? A. Yes, sir.

Government's Exhibit No. 20, check dated September 29, 1964, payable to Friends of Congress Frazier Vol. Fund.

Q. Friends for what? A. Friends for Congress. I assume it is short for Congressman.

Q. Frazier. A. Frazier.

Q. Who is Mr. Frazier? A. He is a United States Congressman, or was a candidate for Congress from the State of Minnesota.

Q. He was a Democrat too, wasn't he? A. I don't know that for sure, Mr. Randall.

Q. All right. A. Government's Exhibit 21, a check dated September 29, 1964, in the amount of $1,000, payable to Citizen for Proxmire U. S. Senator.

Q. Who is Mr. Proxmire? A. Mr. Proxmire is a United States Senator from the State of Wisconsin.

Q. And he is a Democrat, isn't he, sir? A. Yes, sir.

[314] Government's Exhibit 22 is a check dated October 8, 1964, in the amount of $2,000 payable to The President's Club.

Q. I guess you concluded that had something to do with the election of the President; is that correct? A. Yes, sir,

because the endorsement says, "The President's Club for Johnson."

Q. Thank you. A. Check No. 23, Exhibit No. 23, a check dated October 13, 1964, for $1,000, payable to Congressman Frank Karsten Committee. That's the same one I have alluded to.

Exhibit No. 24 is a check dated October 15, 1964, for $1,000, payable to Congressman Richard Icord Committee. That's the same individual we mentioned before.

Government's Exhibit 25 is a check dated October 13, 1964, payable to Congresswoman Lenora Sullivan Committee, for $1,000.

Government's Exhibit 26 is a check dated October 13, 1964, payable to Congressman Mel Price Committee, for $1,000. Mr. Price is from Illinois.

Government's Exhibit 27 is a check dated October 16, 1964, payable to Richard Bolling Committee, for $1,000.

Q. And Mr. Bolling is a Democratic Congressman from the Kansas City area, isn't he, sir? A. Yes, sir.

[315] Q. All right. A. Check No. 28, dated October 16, 1964, in the amount of $2,500, payable to Phil Hart, Reelection Committee.

Q. Do you know who Mr. Hart is? A. Mr. Hart is a United States Senator from the State of Michigan.

Q. And he is also a Democrat, isn't he? A. Yes, sir.

Government's Exhibit No. 29 is a check dated October 16, 1964, for $25,000, payable to Doyle, Dane, Bernbach, Inc.

Q. Now, do you know what that check was, sir? A. Our investigation showed that this check was forwarded to the Democratic National Committee, and thereafter forwarded to the payee.

Q. In other words, it was paying an advertisement bill for the Democratic National Committee? A. Yes, sir.

Q. All right. A. Government's Exhibit No.—I don't have Government's Exhibit No. 30 here, Mr. Randall.

Q. I think they pulled those out and put them at the bottom, because there was some difference in them. A. They were separate this morning, I know.

[316] The Court: 30 and 32 were two separate checks.

Mr. Randall: Here it is. 30 is the next one.

A. Government's Exhibit No. 30 is a check dated October 16, 1964, in the amount of $10,000, payable to Bus. & Prof. Vol. for Johnson, Humphrey & Kennedy.

Q. All right. A. Government's Exhibit No. 31 is a check dated October 21, 1964, for $2,500, payable to Cooval Committee for Senator. The endorsement reflects the name should be spelled C-a-r-v-e-l. Mr. Carvel is a United States Senator from Delaware.

Q. He is also a Democrat? A. I believe. I'm not sure on the party affiliation.

Government's Exhibit No. 32 is a check dated October 28, 1964, in the amount of $25,000, payable to Friends of L. B. J.

Q. How is that endorsed? A. That is endorsed, "Pay to the order of Madison National Bank, Friends of LBJ, Paul A. Porter, Treas."

Government's Exhibit 33, dated April 8, 1965, check in the amount of $5,000, payable to The President Club. That's endorsed to the account of the Democratic National Committee.

Q. Mr. Buckley, going back to that check just before, do you know who Mr. Paul Porter is? [317] A. Yes. He is a member of a law firm in Washington, D. C.

Q. He is a lawyer, member of a law firm? A. Yes, sir. Did you get that on check No. 33? Dated April 8, 1965, $5,000, payable to The President's Club.

Government's Exhibit 34 is a check dated May 5, 1965, payable to Helen Dunlop, in the amount of $869.05.

Q. Do you know who Helen Dunlop is? A. Yes, sir. She is the secretary to Senator Edward V. Long from Missouri.

Q. All right. A. Government's Exhibit 35 is a check dated June 9, 1965, for $1,250, to Milwaukee Publishers, Inc.

Q. Do you know what that was for, sir? A. Yes, sir. That was to pay for some political advertisement for a man named Clement Zablocki, who was a candidate for Congress from Wisconsin.

Q. And he's a Democrat too, is he? A. I don't know that, Mr. Randall, offhand.

Q. All right. A. Government's Exhibit 36 is a check dated June 21, 1965, for $1,000, payable to the Democratic Congressional Dinner Com.

Q. Exhibit No. 37 is a check for $100, dated February 22, 1966, payable to the Non-Partisan Testimonial Dinner (Melvin Price). That's Mr. Price that we referred to.

[318] Government's Exhibit 38 is a check dated March 1, 1966, in the amount of $5,000, payable to Long for the Senate Committee. That is Senator Edward V. Long of Missouri.

Q. Thank you. A. Government's Exhibit 39 is a check dated April 5, 1966, in the amount of $100, payable to the Non-Partisan Testimonial Dinner, and it is endorsed on the back by the same endorser of the prior check for $100 for Mr. Price.

Government's Exhibit No. 40, dated May 5, 1966, is a check for $1,000, payable to the Democratic National Committee.

Check No. 41 is a check dated June 7, 1966, in the amount of $3,000, payable to Long for the Senate Committee, referring to Senator Long of Missouri.

Check No. 42 is dated June 23, 1966, in the amount of $5,000, payable to The Democratic National Committee.

Check No. 43 is a check dated June 27, 1966, in the amount of $1,000, payable to Ichord for Congress Committee. That refers to Congressman Ichord.

Q. From down in southeast Missouri? A. Yes, sir.

Check 44, dated July 29, 1966, check in the amount of $1,000, payable to the Fraser Voluntary Committee.

Q. That is the same gentleman referred to before? [319] A. I believe that is the gentleman I referred to before.

Check No. 45 is a check dated August 23, 1966, in the amount of $1,000, payable to The Honorable Aileen B. Ryan, and after that appear the words "Campaign contribution," and Mrs. Ryan was a candidate for the United States House of Representatives from the State of New York.

Q. Was she a Democrat? A. I don't really know, Mr. Randall.

Check No. 46 is a check dated September 30, 1966, in the amount of $1500, payable to the Congressman Richard Bolling Committee, who is from Missouri.

Q. From up in Kansas City? A. Yes, sir.

Check No. 47 is a check dated September 30, 1966, in the amount of $1,000, payable to the Friends of Fraser Voluntary Committee, refers to Congressman Frazier I talked about before.

Check No. 48 is a check dated September 30, 1966, in the amount of $1,500, payable to the 24th Illinois District Congressional Campaign Fund, and that's endorsed, "Melvin Price, 24th District Campaign Committee."

Q. It is the same Mr. Price? A. Yes, sir. Check No. 49 is a check dated October 5, 1966, in the amount of $1,000, payable to Re Elect Stalbaum to [320] Congress Committee.

Q. Have we identified Mr. Stalbaum yet, Mr. Buckley? I don't recall that. A. No, we haven't previously. Mr. Stalbaum was a candidate for Congress in the State of Wisconsin.

Q. Do you know what his politics was? A. I really don't know, Mr. Randall. No.

Q. All right. A. Check No. 50 is a check in the amount of $2,000, dated October 5, 1966, payable to Race Club for Congress. And Mr. Race was a candidate for Congress from the State of Wisconsin.

Q. Do you know what his politics is? A. No, I do not, Mr. Randall.

Government's Exhibit No. 51 is a check dated October 5, 1966, in the amount of $10,000, payable to Committee to Re Elect Paul A. Douglas. Senator Douglas was the senator from Illinois.

A. He was the Democratic senator from the State of Illinois? A. Yes, sir. Government's Exhibit 52 is a check dated October 5, or 6—it's been crossed over there—1966, in the amount of $2,000, payable to Fogarty's Campaign Committee, and Mr. Fogarty was a candidate for United States House of [321] Representatives from Rhode Island.

Q. Do you know his politics? A. I don't know his political affiliation.

Government's Exhibit No. 53 was a check dated October 6, 1966, in the amount of $1,000, payable to Fallons Campaign Committee. Mr. Fallon was a candidate for United States House of Representatives from the State of Maryland.

Q. Did you determine his politics? A. I did not, sir.

Check No. 54 is a check dated October 10, 1966, for $1,000, payable to Franklin Haney for U. S. Congress. Mr. Haney was a candidate for Congress, and I don't have the state on my notes here.

Q. You don't know his politics? A. I do not, sir; no, sir.

Check No. 55 is a check dated October 19, 1966, for $1,000, payable to the Harding for Senator Committee. Mr. Harding was a candidate for United States Senator from the State of Idaho.

Q. And he was a Democrat, wasn't he? A. I do not know, sir.

Q. All right. A. Check No. 56, dated October 27, 1966, for $1,500, payable to the Congressman Frank Karsten Committee; Democrat [322] from Missouri.

Q. That is the same Congressman? A. Yes, sir.

Check No. 57 is a check dated October 27, 1966, in the amount of $1,500, payable to Congressman Richard Ichord Committee, which is the same party we referred to before.

Check No. 58 is a check dated October 27, 1966, for $1,000, payable to Congresswoman Lenora Sullivan, who is from Missouri, and a Democrat.

And check No. 59 is a check dated November 20, 1966, in the amount of $1,945.50, payable to Milwaukee Publishers, Inc. (Political Printing), and up in the corner is typed the words, "For Clement Zablocki." He is a candidate for the United States House of Representatives from the State of Wisconsin.

Q. And you referred to him before? A. Yes, sir.

Mr. Randall: That's all the questions I have, Your Honor.

Mr. Daly: I have just one question.

The Court: All right.

Cross-Examination

By Mr. Daly:

Q. Mr. Buckley, you may have testified to this and I may have missed it, but all the collections from the Vol-

untary Fund [323] came in via such cash accompanied with a Voluntary Fund sheet; is that correct? A. Yes, I would say that, from the book; yes, sir.

Q. And the sheet then was—then the amounts on the sheet were then entered in these books by Mrs. Stiefelman; is that correct? A. The amounts entered in the books is an accumulation of sheets, a bundle of them.

Q. I'd like to ask you if you ever took the sheets themselves that were brought in and checked them on these books to see if all the money that was brought in was accounted for in these books? A. I did that for one period. It was, I believe, the period of January, 1966, which was a very heavy—I mean they had a lot of contributions that month, and I did it for that month to prove to myself.

Q. Was it a month or a year, sir? A. It may have been a year at that, but I know I did it for a time.

Q. And was all the money accounted for in the books? A. It was all recorded in the books as represented on the adding machine tapes.

Mr. Daly: I have no further questions.

[324] Mr. London: No questions, Your Honor.

Mr. Nangle: No questions.

The Court: Any redirect.

Mr. Riddle: We have nothing further of this witness, Your Honor.

The Court: All right. I think the record ought to show that the defense was given the transcript of this last witness before the grand jury. I mean the last witness Buckley.

* * * * * * * *

[337] **EDWARD W. GISSING,**

being first duly sworn, testified in behalf of the Government as follows:

[338] **Direct Examination.**

By Mr. Riddle:

Q. Sir, would you state your name in full for the Court and jury? A. Edward W. Gissing.

Q. Where do you live? A. Route 1, Dixon, Missouri.

Q. That is down in the area of Ft. Leonard Wood and the Lake of the Ozarks? A. That's correct.

Q. Mr. Gissing, are you a member of Local 562? A. I am.

Q. Pipefitters? How long have you been a member of that Local? A. About fifteen of the last twenty-five years.

Q. Now, at the present time, are you a foreman? A. Yes.

Q. What job are you working on now? A. Ft. Leonard Wood.

Q. Sir, have you been a foreman for the last several years? A. Mostly.

Q. All right. Now, are you a steward for Local 562? [339] A. No.

Q. Have you ever been? A. Yes.

Q. When were you? A. Various times in the last fifteen years.

Q. All right, Sir. What about the year 1963 and '64? Were you a steward then? A. If you tell me what job it was, I'd be able to tell you. I can't go back that far.

Q. All right, sir. Let's talk about the job at Ft. Leonard Wood. A. Yes.

Q. For the Vaught Company? A. Correct.

Q. You were a steward for the Local at that time? A. I'd say so; yes.

Q. What size of a crew did you have working under you then? About, in numbers? A. The peak, between fifty and sixty.

Q. All right, sir. And it decreased in number, I suppose, from time to time, and got down as low as just a skeleton crew? A. Yes.

Q. Do you remember the job at Ft. Leonard Wood where you were employed by the Vaught Company? [340] A. Yes, sir.

Q. Do you remember when that job began? A. In what month?

Q. Yes. A. No, I don't.

Q. You do not. Do you recall about how long it lasted? A. I would say about fifteen months.

Q. Sir, as a steward and a foreman, what were your duties on that job?

Let me withdraw that question. What were your duties or responsibilities as a steward for Local 562? A. Well, it is so involved I just couldn't answer that without—I just wouldn't know how to answer it. Mostly for any disputes and jurisdiction.

Q. All right. What about collecting dues and assessments? A. Yes, sir. When you say collect them, I gather them up.

Q. Sir, while you were working on the Vaught Company's job at Ft. Leonard Wood, did you collect, make collections from your people, the people or staff, or on your shift or crew? A. For what?

Q. Well, for anything? A. When you say collect, do you mean did I gather up some monies?

[341] Q. Yes. A. Yes.

Q. All right, sir. Now, working on your crew there, did you have people who were both members of 562 and who were non-members, or out-of-towners? A. Yes.

(Thereupon, Government's Exhibit No. 74 was marked by the reporter for the purpose of identification.)

Q. Sir, I show you what has been marked Government's Exhibit No. 74, and ask you to examine it and see if you can identify it for the Court and jury, please? A. I would say yes.

Q. What is it? A. It's a form that we use to know how many of these people contributed to this Voluntary Fund, I would say.

Q. All right, sir. Now, in looking at that exhibit that you have in your hands; No. 74, can you tell us if that is prepared in your handwriting? A. Yes.

Q. Does it contain the list of all the people who were working for you at that time for the pay period ending June 20th? A. I don't know if that would include all the people that was working there at that time; no.

[342] Q. All right. Sir, in going down the list, or going over the document that you have in front of you, I notice that there is a column over here to the right that shows the payments of two dollars and a half, two dollars and a half, and so on down the line. A. Um hum.

Q. Who actually collected that money? A. When you say collected, these people come to the office at their convenience and present the money to you. We don't collect it.

Q. All right, sir. How often do they come to your office? A. Usually on some designated day when it is convenient. Usually on a Monday morning.

Q. Usually on Monday morning? A. Yes, sir.

Q. All right, sir. And the collections that are made there on Monday morning are made to you? Are made to you in cash? A. In most cases.

Q. All right, sir. Now, then, do you prepare this list that you have in front of you on the morning that they come in, or did you prepare it in advance? A. I could have made this out any time in the following [343] week at my convenience when I wasn't too busy.

Q. Well, can you explain this for the jury, when you say "following week"? Can you explain that for the jury's understanding, please? A. In some cases, on Monday morning I would be busy doing other things, and they would give this money to just anybody that was around the office there until I had time to list it.

Q. Until you had time to what? A. List it.

Q. All right. Then is it your testimony that you made out this list showing the payments after the money was received? A. Yes.

Q. On each and every occasion? A. Well, I couldn't make this out until after I received the money.

Q. Why was that? A. I wouldn't know what they were contributing.

Q. All right, sir. Now, looking over the list there, can you tell the jury how much per hour, or how much per day was being contributed for that period in that week? A. Well, if they had twenty hours in and paid $2.50, if this is what this says, then they would be paying 50 cents for every eight hours that they worked; is that correct? [344] Q. All right, sir. They would be paying 50 cents for each eight hours that they worked. All right, sir. Now let's look at this fellow McVey. He worked how many hours? A. Thirty-two.

Q. And he paid how much? A. $4.00.

Q. All right. And what is the man's name right beneath him? A. Schwing.

Q. All right. Now, how much did he pay? A. He didn't pay anything.

Q. Why do you have his name on this list? A. Well, he was working out there at the time.

Q. Why do you have his name on the list if he didn't pay you anything, sir? A. I can't answer that. He was probably on the payroll, and I put it down whether he pays or not.

Q. Well, sir, did I understand—— A. He may have been absent.

Q. Do you have a notation indicating about him on your list? A. Yes.

Q. What is it? A. The fact that they don't have any hours down that he [345] worked.

Q. All right, sir. Do you have anything else on the list? A. No.

Q. Do you see the word "Rolla" on there? A. Um hmm.

Q. What does that mean to you? A. Well, in all probability, Mr. Warren wasn't working that week either, and had somebody bring his contribution in for that week, or the week before.

Q. I am talking about the man Mr. Schwing you show not working. A. That's correct.

Q. And show Rolla on there. A. That's where he lived.

Q. All right, sir. Is that where he lived? A. Yes. Incidentally, at this time, the following week this man died.

Q. All right, sir. Now then, my question, sir, after you have looked at that sheet that you have in your hand, and wondering if it may have refreshed your recollection, will you tell the Court and jury if that list was prepared before the collection day, Monday, or on the day that the money was given to you? A. I can't answer that. I don't know whether it was or [346] wasn't.

Q. All right, sir. Is it your testimony now that you don't know whether it was prepared on Monday, or the date that the collections were made, or earlier? A. Usually

when I prepare these lists I prepare it quite a few ahead of time, and I would put carbon paper in it.

Q. Now then, if you would prepare them ahead of time, how would you know what figure to put in for the amount of their, as you say, contribution? How would you know, sir, in advance what a member of your crew would be wanting to contribute next Monday morning? A. I wouldn't know.

Q. How would you then arrive at the figure that you put on the list that you have there? A. Sorry, I don't understand you.

Q. I see. Well, I understand your testimony to be that these were contributions that the people made? A. That's correct.

Q. Then I understood your testimony to be that you filled this out in advance on occasion? A. Just the names, not the amount of money.

Q. Oh, I see. Now, the amount of money you never filled out in advance? A. Not until after it had been contributed.

[347] Q. All right, sir. All right. Now, sir, on the list that I just gave you marked Government's Exhibit 74, I believe you indicated that these people were contributing a dollar a day? A. Yes.

Q. All right, sir. Now then, does that tell you whether those people are members of 562 or out-of-town members? A. Everyone on this sheet would be a member of Local 562.

Q. All right, sir. And every member on this sheet made this contribution to you as the steward or foreman? A. Yes.

Q. All right, sir. Sir, if these members or these people on your crew had been out-of-towners, what would they have been paying? A. In all probability, twice that amount. Now, you are going back to '63 or '64, and that's——

Q. All right, sir. Let me have this marked and you can use it and refer to it yourself.

(Thereupon Government's Exhibit No. 75 was marked by the reporter for the purpose of identification.)

Q. I show you what's been marked Government's Exhibit No. 75, and ask you to examine that and tell the Court and jury if that is filled in in your own hand and in your own writing? [348] A. Yes.

Q. And for what pay period is that? A. This is for June 20th, but it don't have a year on it.

Q. Well, is it for the same period of time as Government's Exhibit 74? A. I'd say yes.

Q. Now, sir, are the people whose names appear on both these exhibits Nos. 74 and 75, were they working on your crew and under your direction? A. I would say yes.

Q. All right, sir. Now, are all of the ones who were working on your crew that are listed on Government's Exhibit 75, that you have in your right hand, are all those people members of the out-of-town unions, or of 562? A. They are not members of 562.

Q. And how can you tell that? A. We keep a record of those who are members of 562, and those who are not, and use separate lists as a convenience for when this money reaches its destination, they don't have to separate it.

Q. All right, sir. Can you tell me, looking at the exhibit that you have in your hand, just by looking at it, whether those people are out-of-towners or members of 562? A. They are out-of-town members.

[349] Q. How can you tell by looking? A. I know them all personally.

Q. Can you tell by the rate of pay, or the rate of the contribution? A. Yes.

Q. What is the rate of the contribution by each of those eleven people? A. I would say here it would be $2.00 for every eight hours that they worked.

Q. As compared to $1.00 per each eight hours worked by a regular member? A. That's correct.

Q. All right, sir. Now, sir, did the people who showed up on Government's Exhibit 75, when you talked to them do you know whether or not they knew that the regular members were paying one-half the amount they were paying? A. Yes, they did.

Q. They did know that? A. Yes.

Q. Sir, is it your testimony that these members from out of town were voluntarily paying twice the amount that the regular members were paying? A. Yes.

Q. That is your testimony? [350] A. That's my testimony.

Q. Were these same members paying dues or assessments to the union, in addition to this amount? A. That, I don't know. Each man on this list had worked for more than two years prior to the time they came on our job. This was nothing that they wasn't familiar with.

Q. Sir, what were they familiar with? A. They had been working on other jobs in this jurisdiction where people had been contributing. They themselves had been.

Q. What is it that they were familiar with? That is what I would like you to tell the Court and jury, sir. A. The fact that people weren't contributing to this fund.

Q. And were they familiar also with the fact that out-of-towners contributed twice the amount? A. I would say yes.

Q. Sir, just one more thing with respect to these two exhibits 74 and 75. Is every name listed on those two lists shown as a contributor, except the man that you said died? A. Yes.

Q. And, sir, with respect to the regular 562 members, is the amount that they contribute, as is indicated on that sheet, based upon a formula, namely, $1.00 per day worked? [351] A. Yes.

Q. And is the contribution on the out-of-towners based upon a formula, $2.00 per day worked? A. Yes.

Q. All right, sir. And is this the way you figured these sheets when you made them up on that formula? A. I didn't figure them.

Q. I see. Now, sir, in the event on a given Monday morning that one of the members, or one of your men came up to you, or as a result of your conversation told you that he couldn't pay you, did you make an entry of that on one of these sheets? A. Very seldom did anything like that happen. If the man couldn't pay, that he didn't have any money, he'd usually borrow some money off of me to eat on the rest of the week.

Q. All right, sir.

(Thereupon Government's Exhibits Nos. 76 and 77 were marked by the reporter for the purpose of identification.)

Q. Sir, I will show you what's been marked Government's Exhibit No. 77, and ask you to examine that and tell the Court and jury if that is in your own handwriting? A. I would say yes.

Q. Sir, how many people are on this list? How many of your men? (352) A. You say "my men." You are saying what?

Q. The people on your force, I guess they are, or crew. A. There's ten listed here.

Q. Of the ten that you list there, how many of them paid? A. Nine.

Q. And what about the tenth one? A. One of them here was sick.

Q. And what do you have underneath the word "sick"? A. Owe.

Q. O-w-e? A. Owe. That's correct.

Q. By that, did you mean that he owed his voluntary contribution for that week?

Mr. Randall: Your Honor, I am going to object to that question as leading.

The Court: Oh, no, he may answer that question.

The Witness: Will you ask me that again?

Q. (By Mr. Riddle) Yes. Did you mean by that that he owed his voluntary contribution for that week? A. I would say this is just a note that he did not pay it. He wasn't there this week; that week; or from the week before. I don't know.

Q. Why did you write the word "owe" on there? A. I don't know.

[353] Q. Now, sir, after you filled this sheet out, where did you send it? The one you have in your hand? A. Well, recently it was sent to the union hall.

Q. To the union hall. And when that came to the union hall, it would have your notations on it? A. I would say yes.

Q. Yes, sir. Now, this is not just an infrequent thing when you put on these that they owe, is it? A. No.

Q. In fact, you did it every time somebody came up short? A. Yes, I guess I did, if I was keeping books right.

Q. And the purpose for that was to let the people up in the head sheets, or at the union hall, know whether a man had paid or not? A. No.

Q. That wasn't the reason? A. No. This was to let me know, for one thing; and let him know, for another thing, when he came back to work.

Q. When he came back to work, what? A. He would want to know.

Q. And he would want to know that he owed you? A. Yes.

Q. All right, sir. Let me show you what's been marked Government's Exhibit No. 76, and ask you to examine it, if you [354] would, please? Is that in your handwriting? A. Not No. 11, no. All the rest of it, I would say is.

Q. All in your handwriting except No. 11? A. Yes.

Q. All right. So there are how many people listed? A. Nine.

Q. Nine. You are at the top of them, and a fellow by the name of Toland is at the bottom? A. That's right.

Q. Of the nine listed on that date, how many of them paid? A. Eight.

Q. What happened to the ninth one? A. He had been terminated the week before.

Q. And what do you have down there beside his name? A. Owe.

Q. Owe? A. Um hmm.

Q. All right, sir. And that went in to the union hall? A. Yes.

Q. Now, is there any correlation between the termination and the fact that he owed? Which came first? Do you know? Was he terminated before he owed or did he owe after he was terminated? Do you recall [355] A. It could be either way.

Q. All right, sir.

(Thereupon Government's Exhibit No. 78 was marked by the reporter for the purpose of identification.)

Q. I will show you what's been marked Government's Exhibit 78 for identification, and ask you if that is prepared by you and in your own handwriting? A. Yes.

Q. That's a report of the collections made by you for the week ending July 31, 1964? A. Yes.

Q. And it shows that there are how many people? Ten on your crew? A. Ten.

Q. All right, sir. Of the ten, how many paid? A. Ten.

Q. Now, sir, I notice that beside the name Mokwa—— A. Um hmm.

Q. ——that there is an odd figure there. He paid $10.00 and then he paid $8.00 for a thirty-two work week. Can you tell the Court and jury why he paid $18.00 for a thirty-two work week—32-hour work week? A. Is this not the man who hadn't contributed the week before, and came in to work this week and then contributed for [356] the week that he hadn't been there?

Q. Oh. He made up for his delinquency in his voluntary contribution. Is that what you are saying? A. Yes.

Q. All right. Now, this report showing that he had caught up on his delinquency, did that go in to the head hall? A. I would say so; yes.

Q. With the money collected? A. Yes.

Q. All right, sir. In fact, sir, the collection of delinquencies or arrears was a common thing for you out on the job? A. No. Again, when you use the word "collect," I never collected anything.

Q. Well—— A. This money was contributed, and for a matter of convenience I, and sometimes somebody else on the job, would try to keep some kind of bookkeeping.

Q. Well, what was the purpose for the bookkeeping? A. To know who contributed and who didn't.

Q. Well, sir, what was the purpose of keeping a record of voluntary contributions? A. So the office would know who contributed, and how much.

Q. All right, sir. Sir, on the job as foreman or steward [357] did you have the right to hire or fire? A. Yes.

Q. Did you have the right to assign jobs? A. Yes.

Q. You could select members of your crew to do one job, and other members of your crew to do another job? A. That's correct.

Q. Now, sir, back before October of 1963—I want to direct your attention to that period of time that would be from January 1, 1963, until October of '63. Do you recall where you were working then? A. No.

Q. All right, sir. Sir, do you remember when the dues went up, or these collections, or voluntary collections, went up from two dollars and a half, or 50 cents a day, rather, to a dollar a day? Do you remember that? A. I don't know when; no, sir. I know that they did, yes, but what year it was, I don't know.

Q. Do you remember that they went up from 50 cents a day to a dollar a day? A. Yes.

Q. All right, sir. Where were you when that happened? A. I'm sorry, I don't know.

Q. Well, at the time that that happened that they went [358] up from 50 cents a day to a dollar a day, were you a steward or a foreman at that time? A. I couldn't answer that and know that I was speaking the truth. I'd have to know what day it was. No, I don't remember. No. I'm sorry.

Q. All right, sir.

The Court: Mr. Riddle, let me know when it would be a good time for a recess.

Q. (By Mr. Riddle) Sir, on the job for the Vaught Company down at Ft. Leonard Wood, do you recall any person working on your crew that didn't make these voluntary contributions? A. No.

Q. Do you know of any person working on your crew throughout that period of time that didn't make his full voluntary contribution? A. Not by name. There may have

been some that didn't; might have been some misfortune and didn't have any money, and maybe left the job or something. I don't know that everybody paid; no, sir.

Q. Sir, did you consider as a result of your handling of the money on the job at Ft. Wood, that you had done a good job in collecting the money from all the members? A. I think I did it accurately, if that is what you are [359] saying. I think I kept pretty fair books.

Q. And did you, to the best of your recollection, did you collect from everyone? A. I would say yes. There could have been people that didn't pay.

Mr. Riddle: This is a good place to break, I guess, Your Honor.

The Court: All right. We will have our afternoon recess.

Is there a statement here?

Mr. Randall: No, Your Honor. You mean—yes, do you have a statement?

Mr. Riddle: We haven't quite finished with him, Your Honor.

The Court: Oh, Ok. We will have an afternoon recess. Bear in mind the admonition I have given to the jury.

(Following a brief recess, Government's Exhibits Nos. 79, 80, 81, 82, 83 and 84 were marked by the reporter for the purpose of identification.)

(The direct examination of Witness Gissing was continued as follows:)

Q. (By Mr. Riddle) Sir, I am handing you what's been marked Government's Exhibits 79 through 84, and ask you if you [360] would examine each of them and see if they were prepared by you, and in your own handwriting? Were they, sir? A. I would say yes, sir.

Q. Sir, is all the writing that appears on them, and particularly the absent or owes, are all of those in your handwriting? A. Yes.

Q. Well, there are others on there. I'd like for you to look at them and be sure. A. Others like this?

Q. Yes. A. Do you refer to this?

Q. No, I am referring to any time the word shows "owe". See if that is in your handwriting? A. I would say yes.

Q. Look at the rest of them. A. I would say that it is all in my handwriting; yes, sir.

Q. All right. Sir, during this same period of time, that is, in the year 1964, at the time you were working on the Ft. Wood job, did you pay assessments to the Union 562? A. When you say assessments, are you saying union dues?

Q. Yes. A. They are deducted out of my paycheck.

Q. They were deducted out of your paycheck by your [361] employer? A. Correct. I would say yes, to the best of my knowledge; yes.

Q. Sir, is it not a fact that somewhere in October of 1963, from there on, all deductions for dues and assessments, withholding taxes, Social Security, were withheld by your employer or the contractor? A. To the best of my knowledge, yes.

Q. All right, sir. Prior to that date, prior to October of 1963, how did you pay your union dues and assessments, before the companies or the contractors withheld? A. I just don't remember. I can't answer that. That's a little bit too far back for me to remember.

Q. All right, sir. Well, sir, the amount of monies that were collected by you, and the amounts of monies that you paid, did you refer to them as assessments? I am talking about the $10.00 that appears, and $5.00 that appears on the Pipefitters Voluntary Fund. A. No, sir.

Q. You never called them assessments? A. No.

Q. Well, now do you understand—or what do you understand an assessment to be? A. Union dues.

[362] Q. Union dues? A. Yes.

Q. All right. Now, sir, do you pay your union dues voluntarily? A. Yes.

Q. You pay this voluntarily? A. Yes.

Mr. Riddle: Thank you, sir. That's all.

If it please the Court, we'd like to offer into evidence Government's Exhibits 74 through 79, and ask that they be received.

The Court: What about 79 through 84?

Mr. Riddle: Through 84, Your Honor. 79, yes, and through 84.

The Court: 71 through 84? Is that it?

Mr. Riddle: 74 through 84, Your Honor.

The Court: 74 through 84. All right. They will be received.

Mr. Riddle: Did His Honor say they could be received?

The Court: They will be received.

Mr. Riddle: Thank you.

(Thereupon, Government's Exhibits Nos. 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 84 were received in evidence.)

[363] The Court: All right. Who is going to cross-examine?

Cross-Examination.

By Mr. Daly:

Q. Mr. Gissing, you indicated to Mr. Riddle that you pay your union dues voluntarily; is that correct? A. That's correct.

Q. You also pay this contribution voluntarily; is that right? A. That's right.

Q. What happens to you if you don't pay your union dues? A. I don't know. I have always paid them, and I am going to continue to pay them. It is a privilege for me to pay them, if that is what you are saying.

Q. What happens to a man who doesn't pay his union dues? A. I don't know of any case where anybody refused to pay them or didn't want to.

Q. Would a man who didn't pay his union dues be expelled from the union? A. I don't know. I couldn't answer that.

Q. All right. You testified that you were steward on the job down in Ft. Leonard Wood; is that correct? A. That's correct.

Q. When did that job kick off [364] A. I don't remember. There was two jobs. One was immediately after the other. I don't remember if there was a time pause in between those two jobs or not.

Q. Were you the steward on both of those jobs, Mr. Gissing? A. Yes, sir.

Q. I see. Now, would you get to the job then before it started? A. In this case, no. The first job was half completed when I went out there.

Q. Well, then would the rest of the pipefitters start at the same time you started out there?

The Court: On a particular day, Mr. Daly?

Mr. Daly: At the same time. Is this correct?

The Witness: Are you talking about this job in particular?

Q. Yes, sir. The Vaught Company job at Ft. Leonard Wood. A. When I went to the Vaught Company job, there had been people working out there, pipefitters working out there for, oh, some four, five, six months.

Q. Was there another steward there before you got there? A. Yes.

Q. All right. Then you became the steward when you got there; is this correct [365] A. Yes.

Q. And it was at this time that you started collecting the fund? Or you say you didn't collect it. They brought the money in to you; is that right? A. That's correct.

Q. Now, had the men who brought the money in to you signed the voluntary card? A. They had signed that prior to the time that I got there.

Q. Were there any of the men hired after you got there? A. Yes.

Q. And did those men contribute to the Voluntary Fund? A. I would say yes.

Q. Did they sign the card? A. Yes.

Q. And from whom did they get the card? A. From either I, or a man that I had in the office and warehouse doing office work.

Q. Now, do you remember when you would give them the card what you would say to the man? A. Well, I would give them the cards when I gave them the cards for their withholding, and in most cases if I didn't give it to them, they would ask for it. These were all men that worked in this jurisdiction for quite some time before.

[366] Q. Did they read these cards? A. Oh, yes.

Q. Did they sign the cards? A. Yes.

Q. Then following that they would make this contribution; is this correct? A. That's correct.

Q. Now, Mr. Riddle indicated that as steward in there you had some right to hire and fire; is this correct, Mr. Gissing? A. If I hire someone or fire someone, it would not be as a job steward. It would be as a piping superintendent.

Q. I see. Let me ask you this. Did you ever know, on that job, or any other job that you have ever been on, anybody to be fired for the failure to contribute to the Voluntary Fund? A. I don't know of anybody that never did pay it.

Q. Did you ever work on jobs, Mr. Gissing, that there were people who did not contribute? A. Maybe for the first week they didn't. Is that what you are saying?

Q. No. At any time? A. No. No.

Q. In other words, most of the men, and all of the men you are saying that worked under you when you were steward, made this contribution; is that right? [367] A. That's correct.

Q. Do you know of men in the Local who did not make this contribution? A. No, sir.

Q. Every man that you know in the Local makes the contribution? A. Are you still talking about the job at Ft. Leonard Wood?

Q. Any job. A. No.

Q. I am talking about the Voluntary Fund. A. I have been on jobs where people didn't contribute.

Q. That is what I am asking about. Did you ever know of those people to be fired as a result of not contributing? A. No, sir.

Q. How long have you been working as a steamfitter, or pipefitter, in this local? A. More than twenty-five years.

Q. And how many different jobs, say, in the last four or five years have you worked on? A. In this area, about five or six in the last five years.

Q. Have you worked in other areas? A. Yes.

Q. What other areas have you worked in? [368] A. I was out in California for seven, eight years, Arizona, New Mexico, Nevada.

Q. On the jobs in this area, how many occasions on these jobs were you either the steward or the foreman? A. Here in Missouri?

Q. Yes, sir. A. Practically every one I have been on in the last ten or twelve years.

Q. I see. And on practically every job would you then be the one to have the money brought to you? A. In most cases, yes.

Q. Then these sheets that you have identified as being yours, these were the records then that you kept on these jobs of the money brought in to you; is that right? A. I would say yes.

Q. And you had the duty then, or the job, or the responsibility of seeing that this money was taken into the Voluntary Fund at the union hall; is that right? A. I would say yes.

Q. And if your sheet shows on the bottom—right here is the total of $30.00, then you would turn in $30.00; is this correct? A. That's correct.

Q. And if it showed other than that, whatever it showed [369] on there, this is what you would take in; is this correct? A. That's correct.

Q. Was there on these jobs, assuming there is some ten, twelve or fifteen men working, was it the same men that contributed week after week to these things? A. Yes.

Q. And were there occasions when men would come in to you and tell you, "Look, I don't have it this week but I will bring it in next week"? A. That happens quite often on Monday mornings.

Q. All right. Now, you don't ever threaten anybody to make them pay this, do you? A. No. I know they want to pay it. It is just a question of time, and they will.

Mr. Daly: I have no further questions.

Mr. Randall: I'd like to ask a few questions, Your Honor.

Cross-Examination.

By Mr. Randall:

Q. Sir, have you always contributed to this Voluntary Fund yourself? Have you always contributed to the Voluntary Fund yourself? A. Yes, sir.

Q. And have your contributions been voluntary? [370] A. Yes.

Q. Has anyone put any pressure on you to contribute to it? A. No, sir.

Q. Now, did you attend some of the meetings of the Voluntary Fund, political meetings that were held on Sunday down at the Electricians' hall? A. Yes, sir.

Q. Did some of the candidates that the Fund was supporting appear at some of those meetings? A. Yes, sir.

Q. Were you aware, generally, of the candidates that were being supported by the Voluntary Fund? A. Yes, sir.

Q. And were they principally Democrats? A. Yes, sir.

Q. And why were they supporting principally Democrats, sir? A. Are you asking me my opinion why?

Q. Yes. A. Well, they have been friends of us and labor.

Q. Because they have been the friends of labor; is that it? A. That is my idea; yes, sir.

Q. Sir, what is your politics? [371] A. I am a Democrat.

Q. Now, sir, can you tell me some of the jobs, or mention the names of some of the jobs, if you can recall, where some of the workers did not contribute to the Voluntary Fund? A. In Missouri?

Q. Yes. A. I had a job up at Jefferson City where quite a few of them didn't contribute.

Q. Did not contribute? A. Yes, sir.

Q. And were they members or non-members of Local 562? A. Non-members.

Mr. Randall: That's all. Thank you.

The Court: Mr. Nangle?

Mr. Nangle: No questions, Your Honor.

The Court: Redirect?

Redirect Examination.

By Mr. Riddle:

Q. You say that the job in Jefferson City sometime ago; that you had some people on your crew that didn't pay? A. That's correct.

Q. When was this, sir? A. I would say two years ago.

Q. Now, these were not members of 562? [372] A. They were not members of 562; no, sir.

Q. All right. How many of them refused to pay? A. They didn't refuse to pay.

Q. How many of them didn't pay? A. About somewhere between twelve and twenty.

Q. How long did that job last? A. I would say thirteen months.

Q. Now, did these twelve or twenty stay on the job there that whole thirteen months? A. They stayed on it, about, I would say ten months.

Q. Ten months. Who was the contractor for that job? A. Natkin Company.

Q. What were you building over at Jefferson City? A. A cough syrup cosmetic plant.

Q. Is that for Chesebrough-Pond? A. Chesebrough-Pond.

Q. Sir, how many people did you have on your crew over there? Total? A. About fifty.

Q. About fifty. Out of the fifty, you say twelve to twenty didn't pay? A. Yes, sir.

Q. The rest of them did? A. Yes.

[373] Q. Now, the twelve to twenty that didn't pay, did you ever talk to any of them? A. Oh, yes.

Q. Did you ask them why they didn't pay? A. Well, in this case, due to jurisdiction or something, the Voluntary Fund didn't want to collect any dues. They all wanted to pay.

Q. Oh, I see. A. They all wanted to pay, but for some reason I didn't accept any contributions from them.

Q. Now, tell the Court and jury about these twelve to twenty that wanted to pay into the Fund, and you say for some reason or other you didn't want to accept the money. A. Not I. I don't have anything to do with this. I just gather it up.

Q. Yes, sir. Well, now who told you not to accept their money? A. The Welfare office.

Q. The Welfare office? A. Yes.

Q. Which Welfare office? A. Local 562.

Q. And who in that Welfare office told you not to accept their money? [374] A. I don't know. I don't remember who it was or—it was an agreement between everybody, I would say.

Q. Well, now the Welfare office just didn't up and talk itself. Somebody in there must have talked. I'd like you to tell the Court and jury who it was that told you not to accept their contributions. A. This is a detailed thing that happened. There is a long story behind this.

The Court: The question was who told you?

The Witness: I don't remember.

Q. (By Mr. Riddle) All right. Well, what were you told? Do you remember that? A. Not to permit the Jefferson City men to contribute into the Voluntary Fund.

Q. All right. Now, how did you go about telling these people that they couldn't voluntarily contribute? A. I just told them they wouldn't accept their money.

Q. Did they come in and want to pay you? A. Most of them; yes.

Q. Did they have the money in their hand, and offer it to you? A. No, but I'm sure they had it in their pockets.

Q. Did they sign a card? A. No.

[375] Q. Did they want to sign a card? A. Most of them; yes.

Q. What did you tell them when they asked to sign a card? A. That at that time we wasn't accepting any contributions from them.

Q. You say from them; from the twelve to twenty? A. That's correct.

Q. Now then, from the others on the job, that would be thirty to thirty-eight, you were accepting contributions at that time? Why were you accepting from these thirty-eight and not accepting from the others? A. These had all been people that had worked for me before on other jobs, and in most cases some of them for years, I imagine.

Q. Sir, the twelve to twenty, were those members of the Jefferson City local? A. They were.

Q. And there was a jurisdictional dispute going on at that time between—— A. Yes.

Q. ——between that local and your local? A. Yes.

Q. And there was quite a bit of dispute about whether [376] their members would pay into this Fund or not, was there not? A. Dispute from who?

Q. Between the locals, between the business agents of the Jefferson City Local and the St. Louis Local? A. I don't think there was any dispute between them.

Q. Now, sir, at any other time in the ten or more years that you have been collecting this money, have you ever

been told to not accept a contribution? A. Yes, in some cases, I would say through the years; yes.

Q. Can you recall any others when you were told not to accept a contribution? A. Not lately in the last year or two, I can't recall any instances.

Q. Well, at any time? A. Yes.

Q. Name another time besides the Jefferson City job. A. Well, prior to the Jefferson City jobs, there was people that they didn't accept dues from. I think that in some cases they may have objected to somebody in the hall, and then just didn't collect any dues off of them—not dues, but assessments, or contributions.

Q. Oh. Well, now what are you talking about, dues, assessments or contributions, Mr. Gissing? A. If you are talking what money that I gathered up, [377] collected, or whatever you want to say, that's contributions to the Political Fund.

Q. It is easy to get it confused with dues and assessments, isn't it? A. No, sir.

Mr. Daly: I object to that, Your Honor; argumentative.

Mr. Riddle: I will withdraw that.

Sir, during all the time that you have been a foreman and a steward out on the job, did anybody ever refuse to sign one of those contribution cards? A. No, sir.

Q. On these contribution cards, does it spell out how much the man is going to contribute? A. I would have to look at the card. We don't pay that much attention to those cards. I don't know. I'd have to look at the card to tell you.

Q. All right. Well, what is the purpose of the card? A. To contribute some money to the political and welfare and educational program.

Q. Well, is the purpose of the card to say how much I agree to contribute? A. I couldn't answer that.

Q. Sir, does the card contain the formula or the amount [378] that each member would contribute? Does it say $1.00 per 8-hour day, or $2.00 for an 8-hour day? A. I'm sorry, I don't remember whether it does or not. I'd have to look at the card. I don't know what it does or does not.

Q. When you start making your checkoff list, these cards we have, it says, the ones we have looked at, goes down the list and the out-of-towners pay $10.00. Now, do you have to go to that out-of-towner's card to see if he authorized you to charge him $10.00 for that week, or $2.00 a day? A. They bring the money to me and tell me how much they owe, or want to contribute.

Q. I see. I see. Which you do mean, owe or contribute? A. I don't know. I'm not that well versed. I would say contribute.

Q. All right, sir.

The Government has nothing further, Your Honor.

The Court: All right.

Mr. Daly: No recross-examination.

Mr. Randall: We have nothing.

Mr. Nangle: Nothing.

The Court: All right. You may be excused.

(Witness excused.)

The Court: Let the record show that there was no [379] request by the defense counsel for the last witness's statement.

Mr. Riddle: We have no statement from Mr. Gissing, Your Honor.

The Court: I just wanted the record to show they didn't ask for it.

Mr. Riddle: All right.

THOMAS J. WILLIAMS,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, would you state your full name for the Court and jury, please? A. Thomas J. Williams.

Q. Sir, are you a member of Pipefitters Local 562? A. Yes, sir.

Q. Are you presently a foreman? A. Yes, sir.

Q. How long have you been a foreman? A. You mean on this job?

Q. Well, last ten years or so? A. Oh, I'd say the last twenty, thirty years.

Q. All right. Sir, directing your—By the way, what job are you working on now? [380] A. Union Electric, Labadie, Missouri, powerhouse job.

Q. Mr. Williams, directing your attention to January of 19 and 63, to refresh your recollection, I believe the records indicate that you were foreman at the Veterans Hospital job here in St. Louis? A. Yes, sir.

Q. Now, in addition to being foreman, were you union steward? A. Acting steward and superintendent; yes.

Q. All right, sir. Sir, in January of 1963, did you receive some forms or some papers from anyone with respect to or in connection with your use in collecting certain monies from people working on your job? A. Some Voluntary Funds received.

Q. All right, sir. Now, who did you get them from? A. Let's see. I think I got them from one of the business agents.

Q. All right. Sir, do you recall who it was? A. I don't know whether it was Dan Long or Dan Looney, I think.

Q. Dan Long or Dan Looney? A. Yes.

Q. Were both of those men business agents for Local 562? A. Yes, sir.

[381] Q. Where did you get these Voluntary Fund forms? A. When I went out to the hall with the assessment money, they give me these Voluntary Fund cards, and I brought them back to the job.

Q. All right. Now, this was in January of 1963? A. As I remember, yes.

Q. All right. You say you went in to the union hall? A. Yes, sir.

Q. All right. And you went in there with assessment money, did you say? A. Yes, sir.

Q. And where had you collected this assessment money? A. On the job.

Q. All right. And from whom? A. From the different fitters.

Q. Who were working under you? A. Yes, sir.

Q. Now, this assessment money that you had, was it in cash or checks? A. Cash.

Q. All right. This is what you had collected for the last week of December, was it? A. Yes; every Monday.

Q. Now then, at that time were you collecting both for [382] the Fund and for the union assessments and dues? A. Let's see. It seems to me we were.

Q. All right, sir. You brought all your money at that time? All the money that you collected? A. Yes, sir.

Q. Whom did you give it to? A. To Dan Looney.

Q. All right. That's money for the political purpose and for the regular dues and all? A. I believe that's right.

Q. All right, sir. Now, was there a change in the Political Fund assessment about January 1 of 1963?

Mr. Randall: Your Honor, that assumes something, he's not testified to political fund assessments. He's talking about the assessment fund dues, which at that time——

The Court: Well, I think the witness will know what he is talking about.

The Witness: Will you repeat that?

Q. (By Mr. Riddle) Yes. Was there a change in the assessment, or dues, or contributions into the Political Fund in about January of 1963? A. Was there a change?

Q. Yes. Was there an increase, decrease? A. I think we decreased the dues, and then it was [383] strictly the Voluntary Fund then.

Q. All right. And how much was the Voluntary Fund? Do you recall? A. I think it was a dollar a day.

Q. A dollar a day. Sir, I will have this marked as Government's exhibit.

(Thereupon Government's Exhibit No. 85 was marked by the reporter for the purpose of identification.)

Q. I show you what's been marked Government's Exhibit No. 85, and ask you to examine that and see if that refreshes your recollection as to what the Political Fund assessment, or dues, or contributions was at that time? A. It was 75 cents a day.

Q. It was 75 cents a day? For what period? A. Well, that was for—let's see.

Q. To refresh your recollection, it says for the weekly report ending January 6, 1963. A. Um hmm.

(Thereupon Government's Exhibits Nos. 86 and 87 were marked by the reporter for the purpose of identification.)

A. These are probably 50 cents a day, wouldn't it?

Q. All right. Sir, let me show you what's been marked Government's Exhibit No. 87, for the pay period ending January 13, 19 and 63. Was that prepared by you? [384] A. Yes, sir.

Q. All right. And what was the rate at that time? A. It looks like this was a dollar a day here.

Q. A dollar a day on January 13, 1963? A. Yes, sir.

Q. All right. A. Just one week later, wasn't it?

Q. Yes. Well, now, does this refresh your recollection as to when the increase went in, or if there was an increase in the political assessment or fund? A. Right now I am just a little stumped on that one.

Q. All right, sir. It looks like an error there, don't it? Three and a half for thirty-two hours? Well, that may be confusing to you. The one on January 13th shows you had twenty people in your crew, and each one paid $5.00? A. Yes, sir.

Q. And each one worked forty hours that week? A. Forty hours that week.

Q. All right, sir. And nobody missed? A. No, sir.

Q. Now, sir, do you remember a man who was working on your job down there by the name of Menke, G. Menke, who was an apprentice? A. What date was that?

[385] Q. That was in February of 1963. A. I sure don't recall that name.

Q. All right, sir. Well, sir, was an apprentice excused from paying the Voluntary Political Fund money? A. As I remember, the apprentices were excused.

Q. They didn't have to pay the Political Fund? A. No.

Q. When you filled out your sheet on an apprentice, did you show that he was an apprentice? A. Have I got it there?

(Thereupon Government's Exhibit No. 88 was marked by the reporter for the purpose of identification.)

Q. Sir, I will show you what's been marked Government's Exhibit No. 88, and ask you to examine it, and tell the Court and jury if that is in your handwriting? A. That is in my handwriting.

Q. All right. And do you show an employee or person on your crew by the name of Menke? A. Menke, apprentice.

Q. Apprentice? A. Yes, sir.

Q. Is the "apprentice" in your handwriting? A. Yes, sir.

Q. And you show no pay? [386] A. No pay.

Q. All right. Sir, from whom did you get your instructions to not charge apprentices? You say they were exempt. Who told you they were exempt? A. Well, I think I got that information from the hall.

Q. Do you remember who at the hall? A. I can't remember whether it was Steska or Mr. Looney.

Q. Mr. Steska? A. Steska or Looney.

Q. Steska or Looney. And they told you not to charge apprentices to the Voluntary Fund? A. I'm sure that's the way it was.

Q. All right. Now, sir, otherwise on this job down at Veterans Hospital, was anybody else exempt from paying? A. I believe at one time I had a Weis working for me.

Q. All right. Sir, was his name W. Weis? A. Bill Weis.

Q. And he was on your crew? A. Yes, sir.

Q. All right. And did you charge Bill Weis any political assessment or dues? A. No, sir.

Q. All right. Was he exempt? A. He was exempt.

[387] Q. All right. Who exempted him? A. I think he was on a permit, and I'm sure it was Ed Steska told me not to charge him any, because—the job was supposed to be temporary and—Can I go to a story on this?

Q. Yes, go ahead. A. His father had been operated on, and he had a serious operation, and he was out of work for quite a while, and the business agent was trying to help the family out by putting the son to work, and he worked as a fitter, and it was understood he was going to be temporary and there would be no assessment charged.

Q. None of this Voluntary Fund assessment? A. No.

Q. You were told by Mr. Steska to not charge him? A. I'm sure it was Ed; yes.

Q. All right. Then did you fill out a sheet on him, on Mr. Weis? A. I don't recall if I did or not. I believe I did, to show all men on the payroll.

Q. All right, sir. Did you include all men on the payroll on the sheets that you turned in to the company—I mean to the union hall? A. Yes, sir.

[388] Q. And you showed on these sheets how much they paid? A. Yes, sir.

Q. All right. And if a person didn't pay, like Mr. Weis or Weis, you showed that on there? A. Yes, sir.

(Thereupon Government's Exhibits Nos. 89, 89-A, 89-B, 89-C, 89-D, 89-E, 89-F, 89-G, 89-H, 89-I, 89-J, 89-K, 89-L, and 89-M, were marked by the reporter for the purpose of identification.)

Q. I now hand you what's been marked Government's Exhibits 89 and 89-A through 89-M, and ask you to examine that exhibit and the attachments. A. What did you want to know here?

Q. I want to know if you prepared them, sir? A. These particular sheets?

Q. Yes. A. No, I don't think I——

Q. You are referring to 89-C? A. Yes, because I never had any typewriter.

Q. You never prepared that one. All right, sir. Examine the rest of them. A. I can't say that I——

Q. All right. 89-D, you didn't prepare it. All right. [389] sir. A. No, sir, I didn't.

Q. 89-E you didn't prepare? A. (Indicating no.)

Q. All right, sir. A. I'd say none of these; no, sir.

Q. You haven't prepared any of these? A. No, sir.

Q. All right, sir. Now, do these purport to show the work of pipefitters which is on the Pipefitters Voluntary Fund, with you as foreman? A. Would you——

Q. Well, do these forms here purport——

Mr. London: Your Honor, may I inquire? He refers to these forms. Those that have been prepared by the witness, or those that have not? May we have a clarification?

Mr. Riddle: I will withdraw that question.

Q. (By Mr. Riddle) Sir, in showing you Government's Exhibits 89 and 89-A through 89-M, sir, it is your testimony that you did not prepare any of these yourself? A. No, sir, I never prepared them.

Q. All right. Now, the fellow by the name of W. Weis, this is the one you referred to as Bill Weis? A. Yes, sir. [390] Q. Sir, do you know a man by the name of Herman Novack? Do you remember him? A. No, sir.

Q. Or Cliff Davenport? A. I don't remember any Davenport.

Q. All right. Or Norman Todd? A. I can't recall any of those names.

Q. All right, sir. Sir, how long did this Bill Weis work down at the Jefferson Bank job? A. Several months. I can't recall just when—I think he stayed on pretty close to the end of the job.

Q. But you never collected anything from him at any time? A. No, sir.

Q. Was anybody else exempt, other than he and the apprentice Menke? A. No, sir.

Q. Sir, how long did the rate of assessment for the Voluntary Political Fund stay at a dollar a day? A. I just can't remember that date.

Q. All right, sir. Well, do you remember when it was changed up or down? A. It was changed down.

Q. All right. [391] A. And I can't remember that date when it was changed. It seems to me—I am at a loss for that date. I can't remember it.

Q. Well, whenever it was changed down, do you remember the amount of change? How much of a decrease was it? A. I think it went in half.

Q. Half, to 50 cents a day? A. Fifty cents a day.

Q. How did you hear of the decrease? A. There had been a meeting, I think, and some fellows told me that the assessments were to be 50 cents, and I just started making them out at 50 cents.

Q. So you started collecting assessments at 50 cents? A. Yes, sir.

Q. Who were the fellows that told you that the Political assessments had been reduced to the 50 cents? A. I think fellows working on the job. I can't recall their name, but there had been a meeting, I think. It was decided at the meeting to reduce it to 50 cents.

Q. These people that you were talking to that told you about this reduction are the people who were working for you and under you? A. Yes, sir.

Q. All right. Pursuant to that, you just decreased the [392] amount of your collections? A. Yes, sir.

Q. All right. Did you call the hall, or anybody, to see, to verify this reduction? A. I don't recall calling the hall for that reduction; no, sir.

Q. All right, sir. Now, sir, back before it was a dollar a day, do you remember getting any word that it had been increased from the previous level up to a dollar a day? Do you remember getting any word on that? A. Did that happen in '63?

Q. Yes, I believe so. A. Well, it seems to me I called the hall on one of those dates, and I can't remember when it was, to have it confirmed that it was a dollar a day.

Q. Who did you talk to at the hall to confirm it? A. I think, then again, it was Looney or Steska.

Q. Either Mr. Long—— A. Long or——

Q. Steska? A. Steska.

Q. What did they tell you? A. It was a dollar a day.

Q. All right, sir. Did you tell the boys what the new [393] assessment was then? A. Yes, sir.

Q. All right. Did they—— A. In fact they all knew it. I think that was voted on at a meeting, and they all knew it, and I only called to have it confirmed.

Q. All right, sir. You began collecting that, and filling out these forms each week? A. Yes, sir.

Q. When the boys came back and told you that the political assessment had been raised from 50 cents up to a dollar, did they say anything at that time? A. No. I can't recall one fellow saying anything about it.

Q. Did they appear to be happy or unhappy? A. Well, they just said if that is what it is, OK, we will pay a dollar.

Q. All right. Did they appear to be happy? A. Well, there wasn't any of them dishappy about it, or any grumbling about it. None of them said anything.

Q. All right. What was their attitude when they found out it was going to be decreased from a dollar back to 50 cents? A. Well, they just took it with the same smile.

Q. I see. Excuse me a second, Your Honor.

Sir, do you recall anybody on your job down at [394] Veterans Hospital that lasted for over a year, that refused to pay? A. No, sir, I never had anyone on my job refuse to pay.

Q. All right. Did they all pay? A. Yes, sir.

Q. Now, how did you handle the collection? Did you go to them, or did they come to you? A. Well, every Monday morning they would come in the office and give me their money. If they worked four days, I collected four days, or five days, I collected five days. They all knew what they owed.

Q. I see. Now, at the time they came into the office, did any of them, did you have to remind them that they owed you? A. No, sir.

Q. You didn't have to remind them? A. No.

Q. Did any of them ever get behind? A. Well, on several occasions a fellow might say he was short, "I'll see you next week," and that's the way I made out the report.

Q. You showed on the report that he owes? A. Yes, sir, or that he didn't pay, see.

Q. Yes, sir. Sir, I noticed that in your testimony you referred to this political contribution as an assessment. [395] Do you refer to it as an assessment in your reports that you send in to the Local? A. No, sir. It was Voluntary Fund. It was wrote out on top of the form, "Voluntary Fund."

Q. Now, sir, I'll ask you the same question I asked some of the other witnesses. Do you pay your union dues or assessments voluntarily? A. Well, that is deducted from our check. It that what you mean?

Q. Yes. A. Yes, sir.

Q. And you pay this fund voluntarily also? A. Yes, sir.

Q. Sir, did you ever attend a meeting of a committee or Board of Directors of this Pipefitters Voluntary Fund? A. No, sir.

Q. Did anybody ever consult you about what candidates, or what use would be made of this money? A. No, sir.

Q. Anybody ever tell you how the money was being spent? A. Well, no, sir. I didn't ask, and nobody told me anything.

Q. Did anybody ever make an accounting to you, or anybody else, as far as you know, of how the funds were [396] being used? A. No, sir.

Q. Do you know how much went into the Fund over a 4-year period? A. I do not know; no.

Mr. Riddle: Just a second, Your Honor. I may be through with this witness.

I believe I have nothing further to ask this witness at this time.

Mr. Randall: I'd like to examine.

Cross-Examination.

By Mr. Randall:

Q. Mr. Williams, you have been a foreman and superintendent on various jobs, pipefitter jobs, for some long period of time, haven't you? A. Yes, sir.

Q. And you have not, except on a few occasions, acted as the steward on the job, if I understand it right? A. Other than a superintendent?

Q. Yes. A. No, sir.

Q. And was it only when you were acting as the steward on the job that you took these contributions to the Voluntary Fund, or was it at other times too? How long a period did you [397] take the contributions? A. How long a period?

Q. Yes. A. Unitl there was a steward appointed on my job.

Q. Only when you had a vacancy in the steward's job? A. Yes, sir.

Q. Now, as a foreman or superintendent, it is your responsibility to run the job, isn't that correct, sir? A. Yes, sir.

Q. And it is the steward's responsibility to handle jurisdictional or union disputes, and things of that nature; isn't that right, sir? A. Yes, sir.

Q. Now, Mr. Williams, have you always contributed to the Voluntary Fund? A. Yes, sir.

Q. Did you sign one of these cards, Voluntary Contribution Agreements? A. Yes, sir.

Q. And in that—— You read it, I suppose? A. Yes, sir.

Q. And you knew that it was purely voluntary? A. Right.

Q. And that you could quit at any time? [398] A. Yes, sir.

Q. Now, did you ever, as a foreman or a superintendent, did you ever place any pressure of any kind upon any man to contribute to the Voluntary Fund? A. No, sir.

Q. Now, Mr. Williams, did you attend the meetings of the members of the Voluntary Fund down at the Electricians' hall, that were held on Sunday? A. No.

Q. You never attended those meetings? A. No, sir.

Q. So during this brief period of time that you accepted these contributions, the men who had attended those meetings came back and told you what the members of the Fund had decided to do about increasing or decreasing their contributions? A. Yes, sir.

Q. In other words, you got your information mostly from people who were working under you, and who desired to continue the contributions agreed upon by the general group? A. Yes, sir.

Q. And that was the Fund itself? A. That's right.

Q. Now, I notice Mr. Riddle, in questioning you, used [399] such terms as "Did you charge." Did you ever charge anybody for Voluntary Fund contributions, in that language? A. No, sir.

Q. And that was his language, and not yours? Isn't that correct? A. If they were charged with me, yes.

Q. Did you tell anybody they had to pay? A. No.

Q. And they came to you on Monday morning and told you how much they wanted to give you? A. Yes, sir.

Q. The only thing was that you used a uniform—they made a uniform type of contribution? A. That's right.

Q. Which had been agreed upon at the meetings of the members of the Voluntary Fund? A. That's right.

Q. When you used, or Mr. Riddle used, in questioning you, the term "assessments," you meant by that the amount that had been agreed upon by the meetings of the members of the Voluntary Fund? A. Voluntary; yes, sir.

Q. And you say, when you used the word "exempt" or Mr. Riddle used it in questioning you about a man named [400] Bill Weis, by that you meant, did you not, sir, that Mr. Steska told you not to accept anything for the Fund because of the hardship in his family? A. Yes, sir.

Q. Now, did anybody, at any time, from the Local 562, Mr. Callanan, Mr. Lawler, and Mr. Seaton over there, tell you to put any pressure on any man, at any time, to require him to make contributions to the Voluntary Fund? A. No, sir.

Q. And did you ever do that, sir? A. No, sir.

Q. And were your contributions to the Voluntary Fund voluntary? A. Yes, sir.

Q. Did anyone ever put any pressure upon you to contribute to the Voluntary Fund? A. No, sir.

Q. Did you desire to contribute to the Voluntary Fund? A. Yes, sir.

Q. Do you still contribute to the Voluntary Fund? A. Yes, sir.

Q. And do you still desire to contribute to the Voluntary Fund? A. Yes, sir.

[401] Q. Sir, were you aware—you say you never did attend the meetings of the Political Fund? A. No, sir.

Q. Were you invited to those meetings? Weren't you sent notices of the meetings? A. No, sir.

Q. You don't receive notices? A. (Indicating no.)

Q. Well, in your work as a superintendent, and in your functions with the Union, were you ever aware of the people that the group was trying to support? Any of the candidates? A. At different times I was; yes.

Q. Well, you knew some of the people they were supporting? A. Yes, sir.

Q. Did you know whether or not they were generally supporting Republicans or Democrats? A. Well, offhand I don't remember whether—they were both parties.

Q. There were some of both parties, you think? A. I am pretty sure there were.

Q. Well, sir, let me ask you this. What is your politics? A. Democrat.

Q. You are a Democrat, and I assume by that, that you were generally in favor of supporting the Democratic candidates? [402] A. Yes, sir.

Q. Now, you say that during this brief period of time that you made these collections, everybody on your job came to you and offered you the amount that had been determined by the meeting of the Voluntary Fund for contributions. Everybody did that; is that correct? A. Yes, sir.

Q. Did you ever have to hunt them up? A. No, no.

Q. Did you ever run them down anywhere? A. No, sir.

Q. Did you ever hear of anybody being fired for not making those contributions? A. No, sir.

Q. Or discriminated against in any way, so far as overtime? A. No, sir.

Mr. Randall: I believe that's all, Your Honor.

Redirect Examination

By Mr. Riddle:

Q. Mr. Williams, these out-of-towners that paid $10.00 a week to you day in and day out, do you think they did that completely and totally voluntarily?

Mr. London: I object to the question, Your Honor.

[403] The Court: I will sustain it as to the form of the question.

Q. (By Mr. Riddle) Sir, in your opinion, did the out-of-towners who paid $10.00 a week, pay that to you voluntarily?

Mr. London: Renew the objection, Your Honor. He is asking for opinions and conclusions.

The Court: I think it is asking for a conclusion, a mental conclusion of this party's witness.

Mr. Riddle: All right.

The Court: It would be an invasion of the province of the jury.

Mr. Riddle: All right. I will withdraw that.

Q. (By Mr. Riddle) Sir, you testified that you don't know of anybody that never paid into the Fund? A. Not on my job. I've heard of men on other jobs that never paid; yes, sir.

Q. Do you know what happened to the other men on the other jobs that never paid? A. They are all working.

They are all old members of the Local, and I know quite a few of them.

Q. You do? A. (Indicating yes.)

Q. Do you know some of them by name that haven't paid? [404] A. Well, let's see. A fellow by the name of Sanders is one, and I think Fisher. A fellow by the name of Lou Fisher. There's one or two more that I know. I just can't think of their names. Charlie Carpenter.

Q. Sir, have you ever wondered what might happen to your job as foreman or steward if you didn't pay?

Mr. Randall: Your Honor, I am going to object to what he might have wondered, unless he has some——

Mr. Riddle: This goes to the issue here that was brought out on cross-examination.

The Court: All right. I think he may answer the question.

The Witness: What would happen to me in the superintendent capacity?

Q. (By Mr. Riddle) Yes. If you refused to pay, have you ever wondered about that? A. I think I'd still be a general foreman, or foreman. I have been that for the last, oh, thirty-five, forty years.

Q. You never took a chance on it though, did you? A. No, sir.

Mr. London: I will object to it as argumentative.

The Court: You are arguing.

Mr. Riddle: I have nothing further.

The Court: Any cross?

[405] Mr. Randall: Nothing more.

Mr. London: No, sir.

The Court: All right. You may step down.

(Witness excused.)

The Court: Have you got a ten-minute witness?

Mr. Riddle: I don't believe that we have a ten-minute witness.

The Court: All right. Members of the Jury, bear in mind the admonition I have given you heretofore, and I have this other matter, and I will try to get through with it in about fifteen minutes, so if you will get here about 9:15, just go to your jury room. All right. Goodnight.

Mr. Daly: What time are we due back?

The Court: Obviously you are not involved in the other case, so you won't have to be here until after 9:15.

(Thereupon at 4:50 p. m., on Wednesday, September 4, 1968, court was adjourned until 9:15 a. m., Thursday morning.)

Thursday, September 5, 1968
Morning Session
(9:45 a. m.)

The Court: Call your next witness.

WILLIAM W. COPELAND,

being first duly sworn, testified in behalf of the Government [406] as follows:

Direct Examination

By Mr. Riddle:

Q. Sir, would you state your full name for the Court and jury? A. William Winston Copeland.

Q. Where do you live, sir? A. Desloge, Missouri.

The Court: How do you spell that last name?

The Witness: C-o-p-e-l-a-n-d.

Q. (By Mr. Riddle) How old are you? A. Thirty-one.

Q. Mr. Copeland, are you a member at this time of any pipefitters local? A. Local 318, Plumbers and Pipefitters, Cape Girardeau, Missouri.

Q. How long have you been a member of that local? A. Since November, '59.

Q. Sir, have you, since 619 and 59, had occasion to work on a job under the jurisdiction of Pipefitters Local 562? A. Yes, sir.

Q. And when was your first job with that Local? A. 1963.

Q. And what job, or what plant, or what construction [407] project was that on? A. It was for Bechtel Corporation, at the Hercules Powder Plant at Louisiana, Missouri.

Q. When did you go to work on that job? A. On or near the 30th day of December, '62.

Q. Now, do you recall who your foreman was on that job? A. No, sir.

Q. Now, in preparation for going to work, will you tell the Court and jury what you did, who did you talk to, and who did you see? A. In order to obtain work?

Q. Yes. A. I went to the hall, 562 office here in St. Louis, seeking employment, and I spoke with Mr. Ed Steska, who sent me to the powder plant.

Q. All right, sir. When you arrived at the powder plant, who did you report to there? A. Dick Sullivan, who was piping superintendent.

Q. Dick Sullivan. You say he was—— A. He was the piping superintendent; yes.

Q. All right. Now, did he have a position with the Union? Was he a member of Local 562? A. To my knowledge, he was a member; yes.

Q. All right. Now, did he put you to work? Mr. Sullivan? [408] A. Not directly. I was assigned to a crew, and went to work under the direction of the foreman.

Q. All right. Do you recall the foreman's name? A. No, I don't.

Q. Sir, are you familiar with what has been referred to as a voluntary card? Voluntary Contribution Card? A. Yes, sir.

Q. Was one given to you when you went to work at the powder plant in Louisiana? A. Yes, sir.

Q. When, with respect to the time that you arrived, was it given to you, if you recall? A. I don't recall if it was given to me the first day, but it was given to me within two or three days after reaching——

Q. Do you recall who gave it to you? A. No, I don't; not exactly.

Q. Did you sign the card? A. Yes, sir.

Q. All right. Did you know what it was? A. Yes, sir.

Q. What was your understanding of what it was? A. That it was to be a voluntary donation for the Pipefitters Political Fund.

Q. All right, sir. You signed it? [409] A. Yes, sir.

Q. Did you give it back to someone? A. Yes, sir.

Q. All right, sir. Then after you were on the job, and after you had signed the card, did you hand in any money pursuant to this card, or to the Political Fund? A. Well, it was customary that the money be collected each Monday morning as you reported to work, and that was the normal procedure. You paid your assessments then.

Q. You paid your what? A. You paid your assessments.

Q. Did you refer to it as an assessment? Did you? At that time? A. Did I refer to anyone that it was an assessment?

Q. No. That the money you paid was an assessment? A. Well, the foreman, he may come up and say, "Have you got your assessments this morning?" That was just general knowledge, it was an assessment.

Q. All right. And what was the assessment for this Fund the first time you paid it, if you recall? A. A dollar and fifty cents.

Q. For what? For what period of time? For the day, or for the hour, or—— A. You paid $1.50 for each day that you worked at the [410] straight time rate. If you worked any overtime, you paid an additional rate equivalent to the time that you worked.

Q. All right. Sir, how long did you work at the plant at Louisiana? A. Till the latter part of March, or early April.

Q. Now then, throughout that period of time, did you pay this assessment each Monday morning. A. Yes, I did.

Q. And who did you pay it to? A. To the foreman.

Q. Sir, did you pay him in cash or by check? A. Cash.

Q. All right, sir. Now, where on the job did you make these payments? A. Well, it may be anywhere in the general area where you were working, but normally each crew had its own particular gang boss or area that it was working in, and it was usually in this area that the foreman collected the assessments.

Q. All right, sir. Now then, after you left the job at Louisiana, did you work on another job for 562? A. Yes, sir. At Farmington State Hospital.

Q. All right, sir. Do you recall the name of that company? A. Shure-Richardson & Company.

[411] Q. All right, sir. And how long did you work there? A. I think I worked there until about the 1st of May.

Q. Of 1963? A. Yes, sir.

Q. All right, sir. A. Did I say May?

Q. Yes. A. I think it was the 1st of June; whenever the strike was called by 562 against the Mechanical Contractors Association.

Q. All right, sir. Now, do you recall who your foreman was on that job? A. Silas Kunrohd.

Q. Kunrohd? A. Yes, sir.

Q. Is that K-u-n-r-o-h-d? A. I don't know, sir.

Q. Now, did you make payments to the Fund during that period of time? A. Well, I made payments to him. I don't know where it went.

Q. You made payments to Mr. Kunrohd, who was the foreman? A. Yes.

Q. In the same amount? A. Yes, sir.

[412] Q. Same rate? That is, 50 cents per day? A. Yes, sir.

Q. Per 8-hour day? A. Yes, sir.

Q. Sir, suppose you worked more than eight hours. Would the rate still be $1.50, or would it be greater? A. Well, I only had one occasion to work any overtime, and that was at the Hercules Powder Plant. I worked one Saturday, as I recall, and I did work overtime a few evenings, and I don't remember exactly what the rate was for those various hours of the evening, but on a Saturday it was a $3.00 assessment.

Q. In addition, just $3.00 instead of a dollar and a half? A. Yes, sir.

Q. All right. Now, how long did you stay at the job at Farmington?—

The Court: He said until June, 1963.

Q. Until June, 1963? Pardon me. And where did you work next? A. I went to California, Missouri, and worked out of the Jefferson City local.

Q. That's Pipefitters local in Jefferson City? A. Yes, sir.

[413] Q. Did you pay any voluntary contributions at that time to the Fund, Political Fund? To the Jefferson City local? A. Well, they don't have a Political Fund, to my knowledge. I didn't pay anything; no.

Q. How long did you work for them down on that job? A. I was there about six weeks, as I recall; six to eight weeks.

Q. All right. And after the job for the Jefferson City local, where did you go next? A. I received a call from Business Agent R. G. Davis of Cape Girardeau local, that I was to report for Murphy & Company here in St. Louis, and we worked in an office building, which I believe was on Manchester.

Q. Was that under the jurisdiction of Local 562? A. Yes, sir.

Q. All right. When you worked on this job here on Manchester, did you make your assessments, these political assessments? A. Yes, sir.

Q. And to whom? A. To the foreman.

Q. Each Monday morning? A. Yes, sir.

Q. And after you left that job, where did you go? [414] A. I was transferred by the same company to Anheuser-Busch.

Q. Do you remember about the time of that transfer? A. It was in August.

Q. Of 1963? A. It was probably the latter part of August, I would say.

Q. All right, sir. Now, do you recall who your foreman was on that job down at Anheuser-Busch? A. No, I don't.

Q. Did you make your payments each month on that job? A. Yes, sir.

Q. And to whom? A. To the steward on that job.

Q. To the steward. You don't recall his name? A. No.

Q. Was it in the same amount? That is, $1.50 a day? A. Yes, sir.

Q. All right. Now, sir, while you were working for this company at Anheuser-Busch, was there an increase in these dues or assessments for political purposes? A. There was an increase in the assessment; yes.

Q. All right. And tell the Court and jury how you found out about that? A. Well, we were working, installing water line, the [415] crew that I worked in, and the foreman approached, there was another fellow there, a fellow by the name of Jim Scaggs. He, too, was out of Local 318.

Q. From Cape Girardeau? A. Yes, sir. And the foreman approaches us on Tuesday morning, as I recall, and said, "Fellows, I have got bad news for you."

Mr. London: I will object to this, Your Honor; hearsay.

The Court: Sustained.

Mr. London: Ask it be stricken.

The Court: It will be stricken.

Q. (By Mr. Riddle) Sir, is this the person who was collecting the dues theretofore?

Mr. Daly: Your Honor, I am going to object to this. I don't think the witness has used that terminology. It is Mr. Riddle's terminology.

The Court: I will sustain it as to the word "dues."

Q. (By Mr. Riddle) Was this the person that was collecting the money from you theretofore? A. The gentleman that told me they were being increased?

Q. Yes. A. No. The steward collected the money.

Q. All right. Well, on this occasion I take it that you [416] did find out that dues were being increased, or that payments were being increased? A. Yes, sir.

Q. All right. Did you find out how much of an increase? A. Fifty cents a day.

Q. All right, sir. That would be from $1.50 up to $2.00 a day? A. Yes, sir.

Q. All right. Then did you have a discussion with the steward about this increase? A. No discussion about the increase, but when we were supposed to, as I recall, we were supposed to have paid $2.50 additional to the assessments that were collected to the previous week. This money was to have been paid on Wednesday morning. On arriving at the job, Mr. Scaggs made out a check to the steward for his assessments, at which time the steward asked me if I wanted to pay mine, and I said, "No, I don't have the money." And he said, "Well, how about me loaning it to you, and you can give it back to me payday?"

And I said, "No. If I pay this, I will be paying $80.00 a month in union dues." And he said, "Well, we all have to pay it," and I said, "Well, I don't have to."

Q. What else, if anything, was said during that conversation? [417] A. Nothing.

Q. What day of the week was this? A. Wednesday.

Q. Did you work the next day? A. Yes, sir.

Q. Now, at that time, where were you living? A. In Desloge, Missouri.

Q. How were you getting to and from your job? A. We drove back and forth each day.

Q. All right. Who was riding with you? A. Jim Scaggs.

Q. This same Jim Scaggs who paid his increase by check? A. Yes, sir.

Q. All right. So you worked on a Thursday? A. Yes, sir.

Q. All right. Were you asked to pay your money on Thursday? A. No, sir.

Q. Did you work this Friday, the next Friday then? A. Yes, sir.

Q. Then what happened on that day? A. On a Thursday, we go back to a Thursday, there was a rumor that there would be a layoff.

Mr. London: I object to rumors, Your Honor. That [418] would be hearsay.

The Court: All right. It will be sustained.

Mr. Riddle: Don't tell me about rumors.

The Witness: On Friday I was laid off.

Q. (By Mr. Riddle) All right. What about Mr. Scaggs? A. He also was laid off.

Q. Now then, did you go back to work for Local 562 thereafter? A. No, sir.

Q. Did Mr. Scaggs? A. Yes, sir.

Q. What job? A. He went to the Pea Ridge Pellet Plant at Sullivan, Missouri.

Q. On a 562 job? A. Yes, sir.

Q. Now, following your layoff on this Friday—well, strike that, if you would.

Were you given any reason for your being laid off? A. No, sir.

Q. Who told you you were laid off? A. The foreman just handed me—it is customary on a layoff that you receive two checks on a Friday evening. On a Friday evening I received my two checks.

[419] Q. And you got them from the foreman? A. Yes, sir.

Q. Did he say anything about why you were being laid off? A. No, sir.

Q. Did you try to get employment on a 562 job or project thereafter? A. Following this layoff, I filed charges against Local 562 on a dismissal at the job at Farmington, Missouri. My brother had already filed charges. Sometime shortly afterwards we were informed by our business manager of Local 318——

Mr. Daly: Your Honor, I will object to this. This would be hearsay.

The Court: I think that is hearsay, Mr. Riddle.

Mr. Riddle: Well, I think it is. Don't testify as to what he told you.

The question, sir, is did you make an effort to get additional employment under a 562 project? A. The only thing I did, under the advice of the NLRB——

Mr. Daly: Of course, Your Honor, this is not responsive to the question.

The Court: Answer the question. Did you attempt to go back to work for 562 is the question.

A. I did not go to the hall and ask for a job; no.

Q. (By Mr. Riddle) Did you make any other attempts [420] to go back? A. To the hall?

Q. Well, any other way to get back on a 562 job? A. I visited different contractors seeking employment, but I was unable to get a job.

Q. All right. What contractors did you go to? A. Sheehan Company.

Q. Where were they operating? A. In St. Louis.

Q. Do you know if they were under 562 project or job? A. Well, they are mechanical contractors in this area; yes.

Q. Do you know if at that time 562 was doing work for them? A. Yes.

Q. All right. In addition to Sheehan, who did you go to? A. I went to one other contractor, but I can't recall his name.

Q. All right. Were you told why you couldn't work——

Mr. London: I object to that, Your Honor; calling for hearsay.

The Court: Well, it is hearsay.

Mr. Riddle: Well, it is hearsay. I think the exception is that it goes to the point of why he couldn't get [421] back on a job, and it would be certainly relevant to prove that point. It wouldn't be hearsay in that respect.

Mr. Randall: Your Honor, if there is no connection with these defendants, the contractors can tell it, and that is the reason for not having hearsay. Whatever they say, they may have made up.

The Court: Well, I am going to sustain the objection to it.

Mr. Riddle: All right, sir.

Q. (By Mr. Riddle) Did you go to any other contractors than the two you mentioned? A. No, sir.

Q. Sir, since that time, have you ever worked on a job under the jurisdiction of 562? A. No.

Q. Sir, do you have some brothers? A. Yes, sir.

Q. How many? A. Two.

Q. What are their names? A. Clyde Copeland and Edwin L. Copeland.

Q. Are they pipefitters? A. Edwin L. Copeland is a pipefitter.

Q. Do you know if he ever worked on a 562 job? [422] A. Yes, sir.

Q. Where? A. Well, he worked at the Hercules job the same time as I did.

Q. Did he work for the Fisher Body job here in St. Louis for some period of time? A. I don't know.

Q. All right. Mr. Edward—is Mr. Edward L. Copeland now deceased, your brother? A. No, sir.

Q. Do you have another brother now deceased? A. Yes, sir.

Q. What is his name? A. Leroy Copeland.

Q. Was he a pipefitter? A. Yes.

Q. Did he work on 562 jobs? A. Yes, sir.

Q. Here in St. Louis? A. Yes, sir.

Q. Now, sir, at the time that you were told down on the Anheuser-Busch job that there was going to be an increase in dues, were you told at that time why the increase was coming about?

[423] Mr. London: I object to this, Your Honor. It calls for hearsay.

The Court: Well, I think this is hearsay too, Mr. Riddle.

Mr. Riddle: It is coming from the foreman, or from the steward, who is the representative of the union on the job, Your Honor.

The Court: Who was the person that told you of the increase?

The Witness: The foreman told me.

The Court: Who was he?

The Witness: I don't recall his name.

Mr. Randall: Your Honor, the foreman is not a representative of the union. The steward is but the foreman is not. He's just a member, like anyone else.

Mr. Riddle: Well, the foreman does the collections. He at least represents them in that respect, according to the testimony, Your Honor.

Mr. Randall: He took the contributions for the Fund, but he doesn't represent the Union.

The Court: Have you got something you want to say?

Mr. London: No. I am waiting to——

The Court: Well, of course, there's two things about this, Mr. Riddle. One, he doesn't know who he is. He says he [424] is a foreman. And I think it is——

Mr. Riddle: I will withdraw the question.

The Court: All right.

Q. (By Mr. Riddle) Sir, are you in business for yourself now? A. Yes.

Q. And where do you conduct your business? A. In or near the area of St. Francois County.

Mr. Riddle: I have no further questions.

The Court: All right. Who is going to conduct the cross-examination?

Mr. Randall: Your Honor, I wonder if we could get the grand jury testimony of this man?
Your Honor, it is forty-one pages.

Mr. Daly: How many pages?

The Court: Forty-one. Well, I guess it is going to take about ten minutes. I will give you a ten-minute recess, members of the jury. You may step down, young man.

Mr. Riddle: If it please the Court, we have another statement we will give them, and would like the record to so show.

The Court: All right. Let the record show they gave them a statement and testimony.
I want to admonish you members of the jury about not [425] discussing this case among yourselves, or not talk-

ing to any of the parties, witnesses, in the courtroom or out of the courtroom. You should form no opinions about the case until you have heard all the evidence. You should read nothing about it. And I think that a good policy for you to follow until the conclusion of this case is not to read the newspaper and not to listen to the radio or television, except when you know that a ballgame is on, or something where there is not going to be any news.

All right. Bear in mind that admonition.

We will have about a ten-minute recess.

(Following the recess, Mr. Copeland resumed the witness stand, and the further following proceedings were had before the jury:)

Cross-Examination.

By Mr. Randall:

Q. Mr. Copeland, you are a member of Local 318 of Cape Girardeau; is that correct? A. Yes, sir.

Q. And you are not a member of Local 562 of St. Louis? A. No, sir.

Q. And you have never been a member of Local 562? A. No, sir.

Q. You came into the St. Louis area and went to work [426] here under the contractors who fell within the jurisdiction of Local 562, as I understand, approximately December 30, 1962? A. Yes, sir.

Q. And when you first went to work, you signed one of these voluntary cards? A. Yes, sir.

Q. Did you read the card? A. Yes, sir.

Q. And you read in the card that you could quit the contributions at any time? A. Yes, sir.

Q. Now, your second job, as I understand it, was at the Farmington State Hospital, which was also under the jurisdiction, or the contractor was under the jurisdiction of Local 562. Am I correct in that? A. Yes, sir.

Q. And 562 called a strike in June of 1963; is that correct? A. Yes, sir.

Q. Now, they did not strike against all contractors? A. No, sir.

Q. And they did not strike against the contractor at Farmington? A. No, sir.

[427] Q. And you were laid off at that time, weren't you, sir? A. Yes, sir.

Q. And you were replaced by some members of Local 562, under whose jurisdiction that contractor performed? A. Yes, sir.

Q. Then you were later employed, perhaps somewhere in between, at Anheuser-Busch; right? A. I was later employed—say that again, please.

Q. Well, you were employed down at Anheuser-Busch at one point, weren't you? A. Yes, sir.

Q. That was subsequent to your lay off down in Farmington? A. It was after my layoff at Farmington.

Q. Yes, sir, after. Now, going back to the layoff at Farmington, at the time the men were laid off at Farmington, were any members of Local 562 laid off? A. No, sir.

Q. No, sir. And then you were at Anheuser-Busch and you were laid off there too; right? A. Yes, sir.

Q. You and Mr. Scaggs? A. Yes, sir.

Q. You were both members of Local 318 of Cape Girardeau; is that correct? [428] A. Yes, sir.

Q. Were any members of Local 562 laid off at that time? A. Not to my knowledge.

Q. And then immediately after your second layoff you filed a complaint with the National Labor Relations Board concerning your first layoff down in Farmington, didn't you? A. Yes, sir.

Q. And you litigated that matter subsequent to that time, didn't you, sir? A. Pardon?

Q. And you litigated the matter, you tried the matter complaining about your layoff down in Farmington? A. Yes, sir.

Q. And you asserted that you were laid off because of the actions of Local 562, didn't you, sir? A. Yes, sir.

Q. And ever since that time you have had a strong bitterness against Local 562, haven't you, sir? A. No, sir.

Q. You have not? A. No.

Q. Have you ever asserted any strong feelings about Local 562 to anyone? [429] A. Yes, sir.

Q. You have? A. Um hmm.

Q. And when the grand jury was in session, you came forward voluntarily after reading in the newspaper that they were in session, didn't you, sir? A. Yes, sir.

Q. And asserted these strong feelings against Local 562, didn't you? A. If you call them strong feelings, yes.

Q. Well, wouldn't you call them that, sir? A. Anything else would be unnatural, I would think.

Q. All right. And so today, this very moment, you have strong feelings of bitterness toward Local 562? A. I have strong feelings to this extent. As I understand, I'm not required by law to pay to any political contributions.

Mr. Daly: I will object to this on behalf of defendant Callanan. This is not responsive to the question.

Mr. Riddle: If it please the Court, this is in answer to the question.

The Court: I think it is in answer to the question. The objection will be overruled.

Mr. London: May the defendant Seaton also join in [430] that objection, Your Honor, as well as the Union?

The Court: It will be overruled.

The Witness: I have resentment to this extent. As I understand the law, I am not required——

Mr. Daly: Your Honor, his understanding of the law, I think, would not be relevant at this time. I am going to object to it.

The Court: Be overruled.

Mr. Randall: You may go ahead, Mr.——

A. I am not required to contribute to any political contribution as a requirement or a condition of work. This is what I bitterly oppose, and I shall continue to oppose it as long as I am able to.

Q. Now, Mr. Copeland, your layoff at Farmington had absolutely nothing to do with your contributions to the Voluntary Fund, did it, sir? A. No, sir.

Q. And you are still bitter about that layoff, too, aren't you? A. To this extent. According to the jurisdiction of work awarded by the United Association, Cape Girardeau local has jurisdiction of the County of St. Francois. 562 has jurisdiction of the County of St. Francois. To my knowledge, in the past eight years I am not aware of any job that has [431] been manned by men of Local 318. There was a time when they did handle work on small jobs, but this no longer is in practice. All jurisdiction is controlled by Local 562. If you are not a member of that local, you are not entitled to the rights and benefits of those men that are. The United Association spells out that a man shall hold his membership, or should hold his membership in the local nearest his home. This isn't the policy.

Q. Well, that has nothing to do with the Voluntary Fund though, does it, sir? A. But it would show my bitterness as to why.

Q. That's right. Yes, sir. Now, when you were laid off down at Anheuser-Busch, Mr. Scaggs, who was a member of your local, was also laid off; right? A. Yes, sir.

Q. And he continued to contribute to the Voluntary Fund, didn't he, sir? A. State that again.

Q. And he continued, as I understood your testimony, he did not decline to contribute to the Voluntary Fund? A. No.

Mr. Randall: That's all.

The Court: Anybody else?

Mr. Daly: No, Your Honor.

[432] The Court: Any redirect?

Mr. Riddle: Yes.

Redirect Examination.

By Mr. Riddle:

Q. Sir, although Mr. Scaggs, your riding mate, was laid off, did he go back to work the following Monday? A. Yes.

Mr. London: I object to this, Your Honor. It is calling for hearsay, unless he was personally present.

The Court: The question was if he knows if he went back.

Q. (By Mr. Riddle) Do you know if he went back to work the following Monday? A. Yes, sir.

Q. On a 562 job? A. Yes, sir.

Q. And where was that? A. At the Pea Ridge Pellet Plant, at Viburnum, Missouri.

Q. All right, sir. Now, sir, with respect to what Mr. Randall asked you about this card that you signed, I believe he asked you if you read it? A. Yes, sir.

Q. And your answer to him on that was that you had read it. Sir, why did you sign the card at that time?

[433] Mr. Randall: Well, Your Honor, I am going to object to why he signed the card.

Mr. Riddle: Your Honor, he's opened up this area.

The Court: I think it is in relation to your cross-examination, Mr. Randall, and he may answer.

The Witness: I was afraid that I wouldn't work if I didn't.

Mr. Randall: Your Honor, I am going to ask that that question be stricken as his mental process——

The Court: No, it will be overruled.

Q. (By Mr. Riddle) Mr. Randall asked you if your bitterness stemmed from contributing to the Voluntary Political Fund. Sir, after you signed the card, why did you continue to pay until the dues were increased? A. The only reason I ever paid it was because I was afraid that if I refused, I wouldn't work, and when they increased the dues, at that time I was twenty-six years old, and I thought if I do this today at twenty-six, what will I do when I am forty?

Q. Sir, do you have any other trade or profession other than that of a pipefitter? A. After being unsuccessful to work with the fitters, I went to Missouri Barber College to become a barber, but I didn't follow it through.

[434] Q. How much formal education do you have, sir? A. High school; twelve years.

Q. All right, sir. Thank you.

The Court: Any recross, Mr. Randall?

Mr. Randall: Yes.

Recross-Examination.

By Mr. Randall:

Q. Mr. Copeland, you testified on direct, didn't you, that you didn't apply for a job after you were laid off down

at Anheuser-Busch? Isn't that correct? A. I didn't go to the hall and ask for work; no.

Mr. Randall: That's all.

Redirect Examination

By Mr. Riddle:

Q. Sir, where did you go to ask for work then? A. Well, I asked for work at 318.

Q. At your home local? A. Yes, sir, but I was informed——

Mr. London: I will object to this, Your Honor.

The Court: It will be sustained.

Q. (By Mr. Riddle) Who is the man at 318 that you talked to? A. R. G. Davis.

Q. Is he the business manager for that local? [435] A. Yes, sir.

Mr. Riddle: All right. That's all.

Mr. Randall: That is all, Your Honor.

The Court: All right. Step down.

(Witness excused.)

(Thereupon, Government's Exhibits Nos. 90, 91, 92, 93, 94, 95, 96, 97 and 98 were marked by the reporter for the purpose of identification.)

JACK COLLOM,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, would you state your full name for the Court and jury, please? A. Jack Joseph Collom.

The Court: Pull it back and talk into it now, will you?

The Witness: Jack Joseph Collom, 2271 Ainsworth Drive.

Q. You are in St. Louis? A. St. Louis County.

Q. Where are you presently employed? A. Anheuser-Busch brewery.

Q. And who is your employer there? Anheuser-Busch Company? [436] A. Yes, sir.

Q. Sir, are you a member of Pipefitters Local 562? A. Yes, sir.

Q. How long have you been a member? A. Approximately twenty years.

Q. Sir, do you hold any position in the Union? A. I am a steward on the job at Anheuser-Busch brewery.

Q. All right. And what are your duties as a steward? A. Well, to try to settle any jurisdictional disputes we might have between our craft and some other on the job; any problems that might arise between our craft and the brewery itself. Also, I check the volunteer money and the assessments money for 562.

Q. All right. Sir, are you the foreman of a crew or a group of workers down there also? A. On Saturdays I act as the foreman for a group of men that would be employed in the Bevo bottle shop.

Q. All right, sir. Sir, are you the ranking union official on that job? A. Yes, sir, I would say I would be.

Q. Any member down at Anheuser-Busch, or pipefitter that wants to talk union business, you'd be the person that they'd talk to? A. Yes, sir.

[437] Q. How long have you worked down at Anheuser-Busch? A. Approximately twenty years.

Q. How long have you been a steward? A. It will be three years in November, as well as I can remember.

Q. How many people are under your jurisdiction there? A. Oh, approximately between ninety and a hundred, I would say.

Q. Now, ninety and a hundred—between ninety and a hundred. Do you collect money from them each week? A. Yes, sir. Sometimes they are short. I mean they don't have it. Then, why naturally they don't pay that particular week, but it is a policy every week.

Q. All right. What day of the week do you make these collections? A. Usually on Tuesday.

Q. Tuesday? Now, what collections do you make each Tuesday? A. I collect the assessments, and I collect the Volunteer.

Q. Now, the assessments, what do you mean by that? A. Well, it is the amount that the Union 562 union is or—there is a certain amount of our pay that we voted on that would be withheld or taken from our pay for the Union [438] functions, to run our local on.

Q. These are what you would call regular and ordinary union dues? A. Yes, sir.

Q. And assessments? A. Yes, sir.

Q. Now, in your case, down at Anheuser-Busch, the company does not deduct or withhold those assessments? A. No, sir.

Q. Your job is to collect the assessment and the dues from the men on the job? A. Yes, sir.

Q. And you do this every Tuesday? A. Unless there is a holiday, and if a holiday falls on Monday, then we usually make it on Wednesday.

Q. I see. Now, do you collect the regular dues and assessments on the same date and at the same time that you collect the money into this Political Fund? A. Yes, sir.

Q. The same people pay? A. Yes, sir.

Q. All right, sir. You have been doing this for approximately three years? A. Yes, sir.

[439] Q. Now, sir, how do you keep your records, first, with respect to the assessments? The regular union dues with assessments? A. Well, we have a book that we mark the amounts behind each man's name that he has given for that week.

Q. Now, where do you get these books? A. From the union hall.

Q. All right. Now, the so-called Political Voluntary Fund, how do you handle them? A. We have a separate book that we mark them out behind each man's name.

Q. Containing the same names and the same working hours, and so forth? A. The working hours I don't think are put in there.

Q. All right. Now, where do you get the book that you keep those records in? A. From the union hall.

Q. From the union hall. So you get the books for both the Funds from the same source? A. Yes, sir.

Q. All right. Now, sir, at the end of each week's collection, do you file any reports to the union hall? A. Yes, sir.

Q. What do you file? [440] A. I file it by a report. What I file are these sheets with these men's names.

Q. How do you get them to the union hall? A. I take them out there.

Q. All right. Do you take both sets or both sheets each week to the union hall? A. In separate envelopes; yes, sir.

Q. Separate envelopes? A. Yes, sir.

Q. Now, sir, do you receive cash for both purposes? A. Yes, sir.

Q. All right. A. And also checks, if I might add that.

Q. Some checks? A. Yes, sir.

Q. What percentage of the total amount you collect are in checks, and what percentage in cash? A. Oh, I would say between eight and fifteen checks a week.

Q. From the ninety or a hundred people? A. Yes, sir.

Q. And the rest of them are all in cash? A. Yes, sir.

Q. Cash for both purposes? [441] A. Yes, sir.

Q. All right. Sir, I will show you what has been marked Government's Exhibits Nos. 90 through 98, and ask you to examine them and tell the Court and jury what they are and what they represent, sir. A. Well, from what I can see of them, sir, they are copies of our Voluntary Fund, sheets from our Voluntary Fund book.

Q. For what period of time? Would you tell the Court and jury that? A. The first one is dated 12-25-66, and the last one is dated 9-3-67.

Mr. Riddle: Mr. Randall, did you say you wanted to see these?

(Mr. Riddle handed exhibits to Mr. Randall.)

(Thereupon Government's Exhibits Nos. 99 and 100 were marked by the reporter for the purpose of identification.)

Q. Sir, you have examined the Government's Exhibits 90 through No. 98. Were these prepared by you, and in your own handwriting? A. Not all of them, sir, are in my handwriting.

Q. Well, now who prepared the ones that aren't in your handwriting? A. Well, some of them that I have seen there I would [442] recognize as being in the handwriting of Mr. Frank Villa.

Q. Who is he? A. Frank Villa is a foreman in the Bevo pipe shop.

Q. All right, sir. Were they prepared under your direction? A. Mr. Villa has assisted me in the preparation of these at times; yes sir.

Q. The ones that he would prepare, did you turn them in to the union hall? A. Yes, sir.

Q. I see. Now, sir, in the period of time that's covered here—it appears to be from December 25, '66, through September 3, 1967—throughout that period of time, you had about ninety to one hundred men working under your jurisdiction? A. Approximately, sir.

Q. These payments were made to you each Tuesday? A. Yes, sir.

Q. Sir, during that period of time, did any person fail to pay you? A. Well, I would have to look again, but I'm sure there were weeks when men didn't have it and just skipped it; yes, sir.

Q. All right. In the instance where a man didn't have [443] it and skipped it, did you make an effort to encourage him to catch up? A. Well, what do you mean by an effort?

Q. Well, did you ask him, or remind him that he was behind and didn't pay last week? A. The only time I have ever reminded anyone about anything, and this was strictly about the assessments, would be if Mr. Burke told me to contact a particular man and tell me to have him call Mr. Burke.

Q. Who was that man? A. One of them was Mr. Looney, and there was a Mr. Porselt and a Mr. McVey. There might have been others, but offhand I can't remember exactly who.

Q. Did you talk to them? A. I conveyed the message I was given to convey to them.

Q. All right. And what was the message that you did convey to them? A. To have them call Mr. Burke.

Q. All right. Do you know if they called Mr. Burke? A. Well, I guess they did. Let's say that. I actually can't remember any conversation where the man came back and says, "I just called Mr. Burke." They told

me they would, and that was the end of my conversation about it.

Q. I see. Now, you say this was about the assessments [444] you collect that is aside or apart from the voluntary collections? A. Yes, sir.

Q. Were these same men behind on their voluntary payments? A. Yes, sir.

Q. For the same period of time that they were behind on their other dues and assessments? A. Yes, sir.

Q. Did any man, to your recollection, pay his union dues without paying his so-called voluntary dues? A. Well, I've never had any man give it to me and say, "I want to pay just my assessments." It is just a matter of practice that they would want to pay both.

Q. And, without exception, insofar as your memory recalls—— A. Yes, sir.

Q. ——no person ever paid you for one without paying you for the other? A. No, sir.

Q. And you made a record of it in each and every instance when a person paid, and when he failed to pay you made that record also? A. Well, we just left it blank on our forms there, on our sheets that we would turn in. If they didn't pay, we just [445] left it blank.

Q. Sir, on occasions, did you loan any money, or advance any money to any of the fellows who were short? A. No, sir.

Q. I see. Sir, for a period of time during the year of 1966, I understand that there was a project known as the Callanan Gift Fund. Do you recall that? A. Yes, sir.

Mr. London: May we approach the bench?

Mr. Randall: No, we just want to renew our objections previously made.

Mr. London: I want to approach the bench.

The Court: Do you want a record?

Mr. London: Please.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:).

Mr. London: May we, at this time, in accordance with what Mr. Randall said, renew all the objections that have heretofore been made with regard to any evidence regarding the so-called Callanan Gift Fund, and add to that objection any further evidence would be an attempt on the Government to prove a separate and distinct conspiracy, which is in no way part of the indictment in this case, and which is separate and apart from the alleged conspiracy of the indictment in this case.

[446] The Court: What do you say about this?

Mr. Riddle: Our position is the same as it has been before when the Callanan Gift Fund has arisen, namely, this is being offered for the purpose of showing a continuity of collection, showing the method of collection, showing the conduct of the Union of these defendants, and because of the course of conduct and the method and manner of collection is directly related to proving that these funds are in fact union funds, and that payments made out of union funds are in violation of Section 610 of the Code.

The Court: It will be the same ruling.

Mr. London: May it also be a continuing objection, Your Honor, to all evidence regarding this fund?

The Court: Yes.

(Thereupon the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Sir, do you recall the Callanan Gift Fund? A. Yes, sir.

Q. Did you make collections with respect to it? A. Yes, sir.

Q. And how did you make those collections? A. The same as the Volunteer Fund is handled now.

Q. Sir, is it fair to say that the Voluntary Fund [447] collections were just suspended, and the Callanan Fund collections took its place for a period of time? A. As well as I can remember, I think that's how it was handled.

Q. Was the rate of collection for the Voluntary Fund and the Callanan Fund the same? A. Truthfully, sir, I can't remember if it was the same or not.

(Thereupon Government's Exhibit No. 101 was marked by the reporter for the purpose of identification.)

Q. Sir, I will show you what's been marked Government's Exhibit No. 101, which is a folder containing a number of sheets, and ask you to examine them and see if you can identify them for the Court and jury, please? Can you identify them, Mr. Collom? A. Yes, sir.

Q. What are they, please? A. Those are some of the sheets from the Callanan Gift Fund book that we keep at work.

Q. All right, sir. Now, how was the Callanan Gift Fund, that is, the money that you received from your collections, how did you handle it? A. Well, we marked it down in the Callanan Gift Fund sheets, and took it to the union hall.

[448] Q. Each week, together with the other Union money? A. With the assessments.

Q. With the assessments? A. Two different envelopes.

Q. Two different envelopes? A. Yes, sir.

Q. Now, then, who did you give the Callanan envelope to at the Union? A. As well as I can remember, Mr. Eddy Steska was the man I gave that to.

Q. All right. And who did you give the other envelope to? A. I would give that to Mr. Burke; the assessment envelope.

Q. All right. Did you give each of the Callanan Gift Fund envelopes to Mr. Steska, the best you can recall? A. I gave it to Mr. Steska. Now, whether or not I ever gave any to Mr. Beck, I can't recall, but I know Mr. Steska was the original man I gave it to.

Q. Sir, throughout the period of time that you have been collecting for any purpose, for the regular Union or for the Political Fund, has anybody been exempt, as far as you know, down at the job where you work?

Mr. Daly: I will object to the use of the word [449] "exempt".

Mr. Randall: It is assuming something the witness has not testified to.

The Court: Well, I don't know. You might want to remove the word "exempt."

Mr. Riddle: Very well.

Mr. Randall: Your Honor, he's already testified that all the people paid and contributed.

The Court: The jury heard what he testified to. He may rephrase the question.

Q. Sir, was there any exceptions, or was there any person that you didn't collect from throughout this period of time that's covered by these exhibits here we have just referred to? A. May I ask what the last date was on that?

The Court: Well, on the first sheet they went up till September of 1967. I don't know what the last date was on it.

The Witness: As well as I can recall then, no one was, to use your word, "exempt."

Q. All right, sir? Has anybody been exempt since then? A. Yes, sir. There's three men down there that I don't collect any money from now.

Q. What are their name? [450] A. Robert Mitchem. I think his name is Robert. Mitchem is one. Brock is another one.

Q. Brock? A. Yes, sir. And another gentleman named Gooch.

Q. Gooch? A. Yes, sir.

Q. You collect no money from either of those three? A. No, sir.

Q. You don't collect any money from them? A. No, sir, I haven't.

Q. No union dues? A. No, sir, I haven't collected any money from these gentlemen.

Q. Nothing for the Political Fund? A. No, sir.

Q. And they are working on your crew? A. They are working for Anheuser-Busch.

Q. All right, sir. Are they members of Local 562? A. Well, they are working with 562. Now, I actually don't know their official status.

Q. All right. Why do you not collect from them now? A. Because that was the word that was—I was told, I was instructed not to collect any money from these three men.

[451] Q. Now, who gave you those instructions? A. I believe I verified that with Mr. Eddy Steska.

Q. Now then, how did you get those instructions from Mr. Steska? In a letter, or telephone call, or—— A. No, I think I originally—Eddy must have came down about some particular jurisdictional dispute that came up, and I think I asked him about if that was true about these three, and he says, "Yes, that's correct, don't collect any money from these three gentlemen."

Q. All right. Now, was this when they came on the job? A. No, sir. This wasn't the first day they were on the job.

Q. Well, about—Did all three of them come on the job at the same time? A. Yes, sir, I believe they did.

Q. Do you remember about when that was? A. Oh, gosh. I would say, well, between four and six months, as well as I can remember.

Q. Ago? A. Yes, sir, ago.

Q. When they came on the job, who sent them down, if you recall? A. Well, I assume the hall sent them down. As well as I can remember, I think I was on vacation at the time. I'd [452] have to check, but it seems to me I was on vacation the week that they came down there.

Q. I see. Now, did these three men that you have just referred to, did they sign one of these Voluntary Contribution Cards when they arrived? A. I didn't give them any to sign. As I say, I wasn't present. Now, whether or not they have signed, I have no knowledge one way or the other.

Q. As a matter of practice, when a new person comes on the job, are you the one that gives him this Voluntary Card? A. Yes, sir.

Q. Now, in the case of these three, were you told not to give him a Voluntary Card? A. No, sir, I received no specific instructions not to give him a card, just as I have told you, not collect any money from these three men.

Q. Now, did the three men offer to pay you any money? A. They asked me—they saw me collecting from the other gentlemen, and they asked me what I owed them.

Q. Or what they owed you, you mean? A. Excuse me. What they owed me, and I informed them that I was under instruction not to take their money.

Q. Now, sir, are you sure that they asked you what they owed you? Are those the words that they used?

[453] A. Well, I can't remember the exact wording, but——

Q. You told them they owed you nothing? A. I told them that I wasn't to take their money; yes, sir.

Q. All right. Well, did they say anything that they wanted to voluntarily give you anything? A. No, that was the end of it then.

Q. All right. Sir, when you talked with Mr. Steska, did you ask him why you weren't to collect from these three people? A. Truthfully, I can't remember if I did or not.

Q. Well, did he tell you why? A. Well, I don't know if Eddy told me this directly or not, but from what I can gather, the gentlemen are on like a trial basis, as far as I can——

Q. Apprentices? A. Well, we don't have apprentices. We have helpers at the brewery, and I assume they are on a trial basis as a helper at the brewery.

Q. All right, sir. So people who fall in that category, who are on a trial basis, do not pay any dues or any money into the Political Fund? A. These three gentlemen haven't paid anything to me.

Q. Now, have there been any others besides these three, [454] at any time, that you have been collecting from down there, that you can recall? A. No, sir, none that I can recall.

Q. Sir, has there been any change in the dues structure during the period of time you have been collecting? A. You mean in the assessments?

Q. Yes. A. I think originally there was two and a half per cent, and now I think it is three and three-quarters per cent.

Q. All right, sir. Do you remember when that change occurred? A. I would hesitate to say the date. It seems

to me shortly after I became the steward. Let's see. I think it was after the—I'm trying to remember. I think it was after the convention that was held, but I might be mistaken.

Q. All right, sir. In any event, there was an increase in the regular union assessment from two and a half per cent to three and three-quarters per cent? A. Yes, sir.

Q. Now then, do you recall at that same time was there a change in the rate of pay into the Voluntary Political Fund? A. No, sir. I think we paid 50 cents a day for the time I have been the steward, as well as I can remember.

Q. Do you remember when it was decreased from a dollar [455] a day to 50 cents a day? A. I remember that happened, but as far as the date goes, I don't remember.

Q. You remember it did occur? A. Yes, sir.

Q. How did you find out that this so-called voluntary contribution was decreased from a dollar a day to 50 cents a day? A. I would probably be at a union meeting, but I'm not sure about that either, but usually some things such as this is discussed at the union meeting.

Q. All right, sir. Now, was the increase in the regular union dues from two and a half per cent to three and three-quarters per cent, was that discussed at the regular union meeting? A. I would feel sure that it was.

Q. In the same way that the other dues were discussed? A. Yes, sir.

Q. Same people there? A. By same people, what do you mean, sir?

Q. Well, the same people in charge, or directing the meeting? A. I would think so, sir; yes, sir.

Q. All right. Sir, I will show you what has been marked Government's Exhibit No. 99, and ask you to examine it [456] and identify it, if you could, for the Court and jury. A. Well, I would say it's a booklet that we use for the assessments at Anheuser-Busch.

Q. I see. And is that the book that you testified about receiving down at the hall? A. This type of book; yes, sir. That's what I get from the hall.

Q. Now, sir, calling your attention to that book further, is this the book that you have kept yourself? A. It looks like the book we keep; yes, sir.

Q. And it's a carbon copy of the original reports that you filed with the Union? A. It seems to be; yes, sir.

Q. I note on the front page there's a number of small notations. Can you interpret them for the jury and Court, please? A. Well, these are the men that, for one reason or another, have fallen behind paying their assessments over a period of time.

Q. And does it show how much they have fallen behind? A. Yes, sir.

Q. And it shows how much they have fallen behind, and for what period? A. Yes, sir.

[457] Q. Now, I show you what's been marked—and you say this is for your regular union dues. That is, the two and a half per cent? A. This book is for the assessments; yes, sir.

Q. Regular assessments? A. Yes, sir.

Q. I show you what's been marked Government's Exhibit No. 100, and ask you to examine it, if you would, please? A. This is the Volunteer book that we use.

Q. All right, sir. Now then, there's a number of figures appearing on the front of it that to me look to be quite similar to the ones that are in the regular assessments. Can you describe them and interpret it for the jury, please, and the Court? A. Well, this only shows the Volunteer.

Q. All right. What does it show? A. It shows some dates that these gentlemen might have missed their Volunteer.

Q. It shows the ones who are behind? A. And also some who have paid in advance.

Q. Does it show the ones that are behind? A. It seems to contain some that have missed for some particular weeks.

Q. And does it show how much they are behind? [458] A. Yes, sir, it shows the amount for that particular week.

Q. It shows how much they owe all told that would be in arrears?

Mr. London: Your Honor, I am going to object to the form of the question.

Mr. Riddle: I will withdraw that question.

Q. Now, who prepared this little memo that is in the front of the Pipefitters Voluntary Fund? Who prepared that? A. It looks like the handwriting of Mr. Frank Villa.

Q. Mr. Frank Villa is your assistant? A. Well, he helps me with these books; yes, sir.

Q. All right. Now, how many names appear on the front of this book? A. About seventeen, sir.

Q. All right. And what is the first name that appears on it? A. G. Gamble.

Q. And what information appears there about G. Gamble? A. Well, the 29th of October his Volunteer would be $3.50.

Q. Does that mean that he is behind that much? A. Yes, sir. It means he didn't pay for that particular week.

[459] Q. Now then, what is the next name that appears on there? A. W. Hudson.

Q. And what notations are made beside Mr. Hudson's name? A. 10-29 it would be three, and 11.5 it is three, and 11.12 it is $2.50.

Q. So he is behind for one $3.00 payment for a period, then he is behind another $3.00 payment for a period, and

then he is behind $2.50 for a period; is that correct, sir? A. That shows he didn't pay for these particular weeks; yes, sir.

Q. What is the purpose for your keeping records of the delinquency here in these Voluntary contributions?

Mr. London: I object to the form of the question, Your Honor. There has been no testimony about a delinquency by this witness.

Mr. Riddle: Your Honor, I don't think it can be interpreted any other way.

The Court: All right. What is the purpose of keeping this record as you have it there?

The Witness: Well, we have men on vacation down there all year 'round from January right up to Christmas-time, and sometimes some gentlemen pay in advance, or wish to pay [460] in advance before they leave. Other times other gentlemen prefer to pay when they come back. And it is merely a matter of convenience for us to know how much they owe when they come and ask me, "I want to pay my assessments and Volunteer. How much is it?"

So in order to be able to tell them that, we keep these records.

Q. (By Mr. Riddle) Yes, sir. Now, is this for the purpose of your knowing at all times who is paid and how much they have paid? A. It's not for the purpose of knowing how much they have paid. It is, as I said, for the purpose of when they come to me and want to know how much they owe, I'll have the figures available.

Q. And you use that in the very same way that you use the information on the front of your regular assessment book? A. Yes, sir, that's right.

Q. Mr. Collom, were you at any meeting when the decision was made to suspend the Voluntary Political

Fund and initiate the Callanan Gift Fund? A. Yes, sir, I was. I believe I was there.

Q. Where was that meeting held? A. As well as I can remember, I think it was held in the Teamsters Building. It is across from the Electricians' [461] hall. I don't remember the exact street that it is on, but it would be east of Hampton Avenue.

Q. Well, without going into details, can you tell the Court and jury what was resolved or decided at that meeting? A. I think it was resolved that the Political and Educational and Welfare—not Welfare, but Charity and Defense Fund would be suspended temporarily, I presume, and that particular assessment or Volunteer amount we wanted to give would be allocated to the financial trouble of Mr. Callanan.

Q. And at the end of Mr. Callanan's collections, the regular Political assessments would continue?

Mr. London: I object to the form of the question, Your Honor, using the word "assessments."

The Court: All right.

Mr. Riddle: I will withdraw that, Your Honor. He's using the word, however, himself.

Mr. Daly: I object to Mr. Riddle's comment on that, and ask it be stricken.

The Court: Well, the jury knows what transpired here. Let's proceed.

The Witness: I don't know if that was discussed or not, whether or not it would revert back to the usage that it was being used then or not.

[462] Q. I see. Sir, how did you know that you should quit collecting on the Callanan Fund? Where did you get that information? A. As well as I can remember now, and

it might be entirely wrong, I think it was discussed by Mr. Steska at another meeting.

Q. At another meeting? A. As I say, I'm not quite sure about what it is, but I think it came up at a meeting after this had been in effect for a while.

Q. All right. Sir, did this come up at a regular union meeting? A. I hesitate to say whether it has a regular or special; but——

Q. It was a union meeting? A. I feel sure it was a union meeting.

Q. All right. You have attended union meetings over a period of the last twenty years or so, I guess? A. Yes, sir.

Q. Was it any different from the other union meetings that you attended? A. No. I can't recall if this was the only specific business that night or not.

Q. But the conduct of the business, or the conduct of [463] the meeting was just the same as any other special or regular union meeting. A. Are you referring to this meeting at the Teamsters hall?

Q. Yes. A. Well, I think it was—well, it seemed to me there was a little social gathering along with that, sir.

Q. Outside of the social aspect of it, was it similar to all the other meetings that you remember attending? A. As well as I can remember.

Q. Sir, I want to inquire of you about the procedure or the occurrence on the day that you collect money from your men. You testified that you collect for one purpose, for political purposes, and then you collect for regular dues and assessments all at the same time? A. Yes, sir.

Q. And would you tell the Court and jury just how that transaction occurs? A typical one? A. Well, we have quite a few men down there, and some of them work in different departments throughout the brewery, so I station myself in the men's dressing room on Ninth Street

where the majority of men change their clothing, and men from the various departments will collect their assessments and Volunteer money and designate one of their group to bring it [464] over to where I am stationed. Down at the Bevo, some of them will collect there, and then that's where I work, and that's where I return after I have collected the various monies.

Q. Now, when you sit there and collect the money, do you have a cash box, or a little desk, or equipment that you use for this purpose? A. Well, we have a box, yes, sir, that I carry the money back and forth in.

Q. All right. Now, the money that you received, is it all together? Suppose I am an employee, Mr. Kickman and I come up to you with my money for Tuesday morning. Do you collect from Mr. Kickman for the total amount that he owes? A. Yes, sir.

Q. Does the ask you, "How much do I owe all told?" Is that what he asks you? A. Yes, sir.

Q. And what answer do you give him under those circumstances? A. Well, we have—I figure up what the assessments and the Volunteer would be, and give him that particular figure.

Q. And if that happens to be $7.00, you tell him, "You owe $7.00?" A. Yes, sir.

Q. And then you take the total amount from him, and [465] then you separate it? A. In the two different envelopes; yes, sir.

Q. So insofar as the man is concerned that pays you, he owes his one lump sum?

Mr. Randall: Your Honor, that calls for a conclusion and argument.

The Court: Be sustained.

Q. Well, sir, does the man pay you what he owes you in a lump sum, or not? A. If he is paying in cash, yes,

sir. If he is paying by check, he has to give me two different checks.

Q. All right, sir. Sir, with respect to the Callanan Gift Fund, were payments received with about the same consistency as were received into the Political Fund? A. Yes, sir.

Q. And in the same manner it was lumped together if it were paid in cash with the regular dues and assessments? A. Yes, sir.

Mr. Riddle: If it please the Court, at this time the Government would like to offer into evidence its Exhibits No. 90——

The Court: Through 101?

Mr. Riddle: ——through 101, and ask they be received.

The Court: They will be received.

[466] (Whereupon Government's Exhibits Nos. 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 and 101 were received in evidence.)

Mr. Riddle: We will withhold making them available to the jury, if the Court please.

The Court: All right.

Mr. Randall: I have no objection. I do have questions.

Cross-Examination

By Mr. Randall:

Q. Mr. Collom, you have worked at the brewery for how long, sir? A. Approximately twenty years.

Q. And you have been the Union steward there for how long?

Do you have grand jury testimony on this man?

Your Honor, if it is all right, I would like to proceed and let them look at it, and then pick it up rather than take the time.

The Court: All right.

Mr. Riddle: If the Court please, let the record show that we have given the defendants a copy of the grand jury testimony.

The Court: Let the record show that at the request of the defendant, the grand jury notes have been given to [467] them.

Q. (By Mr. Randall) And you have been the steward there for how long, sir? A. Approximately three years.

Q. And Mr. Riddle asked you if you were the principal union officer there. You are the only union officer there; isn't that right? A. Yes, sir.

Q. The steward is the only union officer on any job; isn't that correct, sir? A. Yes, sir.

Q. Now, of course, the other people are members of the Pipefitters Union? A. Yes, sir.

Q. Including the foreman? A. Yes, sir.

Q. Now, with respect to Anheuser-Busch, with exception of Anheuser-Busch itself, your assessments are checked off; isn't that correct? In other words, the employer pays them? A. Yes, sir.

Q. And that is because your contract, Local 562 contract is with all of the contractors, but not with Anheuser-Busch. They have a separate provision with Anheuser-Busch? A. Yes, sir.

[468] Q. So that the only place where the assessments, and you don't refer to those as regular assessments, as Mr. Riddle did. You just refer to them as assessments, don't you? A. Yes, sir.

Q. That is the only place where you have to collect the assessments, the union assessments and dues? A. As far as I know, sir.

Q. Now, during the period, Mr. Collum, that you have been the steward down at Anheuser-Busch, with the exception of these three probationary people that we referred to, and we will talk about later, have all of the employees at Anheuser-Busch, all pipefitters, been members of Local 562? A. As far as I know they have, sir.

Q. There have been no non-members working there? A. Not to my knowledge.

Q. So that during the entire period, your collections, or the contributions made to the Fund by everybody has been 50 cents a day, hasn't it? A. Yes, sir.

Q. You have made no larger collections? A. No, sir.

The Court: Will you gentlemen step up a minute? I only need the two of them.

(Thereupon a colloquy ensued among the Court, [469] Mr. Riddle and Mr. Randall, at the bench, out of the hearing of the jury and the reporter, after which the trial was resumed before the jury as follows:)

Q. (By Mr. Randall) Now, Mr. Collom, are you the steward only for the regular employees, the people that are employed by Anheuser-Busch itself? A. I don't quite follow that.

Q. Well, maybe I am confusing you. In addition to the people, the pipefitters that are employed by Anheuser-Busch, on occasion a contractor comes in there and does some construction work, doesn't he? A. Yes, sir.

Q. And in that case, the contractor also employs pipefitters? A. Yes, sir, that's right.

Q. Now, were you the steward for those people? A. Well, technically no, but if there is trouble that arises, they will usually look up myself and make me acquainted with any jurisdictional dispute that might come up.

Q. In other words, you were consulted by the steward for the contractor's job? Am I correct on that, sir?

Q. In other words, you were consulted by the steward for the contractor's job? Am I correct on that, sir? A. Usually the foreman will come to see me.

Q. I see. Now, did you collect the contributions to the Voluntary Fund for the pipefitters who worked for these [470] contractors? A. No, I don't make that collection.

Q. You did not do that. And, of course, their assessments were done by checkoff, by direct payment to the Union? A. I would assume so.

Q. Now, if I might talk for a minute about these three people that are on probation, or helpers, and you have three people down there at the present who are not full-fledged members of Local 562; is that correct? A. I would assume they are not full-fledged members.

Q. And they are on a probationary period? A. That is what I have been led to believe.

Q. Do they receive the same pay as the other people who work? A. Yes, sir.

Q. But because they have not been admitted into the Union itself, you were instructed not to collect anything from them; is that correct? A. I believe so.

Q. And with the exception of those three people, all of the people who have worked down there during your period as steward have made contributions to the Voluntary Fund; am I correct in that? [471] A. Yes, sir.

Q. Now, during that three years, have you had new people come to work there? A. Yes, sir.

Q. In fact, you have a considerable change, don't you, down at the brewery? People retiring, and things of that nature? A. Yes, sir, there is quite a turnover.

Q. Now, when a new man came to you, sir, to go to work, when he came to work at the place, what did you say and do with respect to him concerning the Voluntary Fund? A. Right now, Mr. Randall, really, I'm trying to

remember who might have came since I have been there, but, honestly, I can't remember whether or not any of them came since I have been there as steward. I remember having some men sign some cards, or requesting them, or asking them if they wished to volunteer, but that was in relation to the Gift Fund at the time. We probably had some men come to work, but I just offhand can't remember which ones might have came during my three years as steward.

Q. Then let's talk about the Gift Fund. What did you do with respect to the cards, and say to the men concerning the Gift Fund? A. All I did was ask them if they wanted to sign one, presented the card to them.

[472] Q. And did all of them sign on the spot, or did some of them retain the card, or what happened in that respect? A. Well, I can't remember if every one of them signed right at the minute, but I know that, as well as I can remember, no one refused me. They all wanted to sign the card, as well as I can remember.

Q. Now, Mr. Collom, let's talk about, for the moment, the meetings of the Voluntary Fund. Did you attend meetings that were held on Sunday of the Voluntary Fund itself, not union meetings? A. Do you mean like a get-together?

Q. Yes. A. Yes, sir, I have been at some of those.

Q. And those were meetings of the Fund itself? A. Well, I'm a little confused by meetings of the Fund.

Q. Well, don't you receive notices of meetings? A. Yes, sir.

Q. You receive by mail a notice of the meeting? A. Yes, sir.

Q. And aren't notices sent out, both for meetings of the Union and also for meetings of the Fund, when those members of the Fund are to meet? A. Well, now we have get-togethers at the Electricians' hall. We have had some

of those. That was just like a social [473] gathering, and also I remember hearing some of the various candidates speak.

Q. Well, do you recall what the notice said that you received for those kind of meetings? A. Offhand I can't remember the wording of the notice. No, sir.

Q. I see. And do you recall that those meetings were called meetings of the Voluntary Fund rather than of the Local? A. I can't remember the exact wording, but they probably would be, because there wouldn't be a meeting of the members for union business.

Q. Now, if it was such a meeting as that when the Voluntary Fund was terminated and the people present decided to institute the Gift Fund to help out Mr. Callanan, wasn't it? A. Yes, sir. Like I say, it was a social gathering along with that.

Q. All right. And the people present decided to terminate the Voluntary Fund and to initiate and create a fund to give to Mr. Callanan? A. That's correct.

Q. Now, Mr. Collom, at some of these meetings, these social gatherings and Fund meetings, you said some of the candidates that were being supported were present? [474] A. Yes, sir.

Q. And were political matters discussed? A. Well, I think they were all just introduced, and they all made, had a few minutes of speaking.

Q. Right. And did someone tell you who they were the Fund was supporting, the candidates generally that they were supporting at these meetings? A. Well, don't know if it was worded like that, but I'm sure we were supporting them, or I don't think they would have been invited.

Q. Were you aware, generally, of the candidates that were being supported by the Fund? A. Yes, sir, I would say aware of it.

Q. And, sir, what is your politics? A. I'm a Democrat.

Q. Now, Mr. Collom, did you, yourself, sign one of these Voluntary Cards? A. Yes, sir.

Q. Have you always contributed? A. Yes, sir.

Q. Are you still contributing? A. Yes, sir.

Q. Were your contributions voluntary? A. Absolutely.

[475] Q. Did anybody ever put any pressure on you? A. No, sir.

Q. To your knowledge, did—Let me ask you this question: Did you ever put any pressure on anyone to contribute to the Voluntary Fund? A. No, sir.

Q. And to your knowledge, did anyone else? A. Not to my knowledge.

Q. What is your rate of pay down at the brewery, sir? A. Four dollars and ninety-two and a half an hour.

Q. Now, sir, Mr. Riddle pointed out that these three helpers, these probationary people, were sent over to the brewery from the hall, 562's hall. Aren't all of your new employees sent over to the brewery from the hall? A. Yes, sir.

Q. In other words, all of the people that are employed, the pipefitters, are referred by 562's hall? A. Yes, sir.

Q. Mr. Collom, if I understand it right, these Exhibits 99 and 100, the other exhibits which were identified by the Government presented prior thereto, are actually photostats of sheets from those two books; am I correct in that, sir? A. I believe so.

Q. And what you did was take the original down to the [476] 562's building with the money and leave a carbon copy in here; am I correct in that? A. We don't have a carbon copy of the Voluntary.

Q. Oh, you do not keep a copy of the Voluntary? A. No, sir.

Q. Oh, I see. You only keep a record down at Anheuser-Busch of the dues and assessments? A. Yes, sir.

Q. Right. And the reason for that, sir, is because it is required that the dues and assessments be paid, isn't it, sir? A. Yes, sir.

Q. And your By-Laws and Constitution provide that a man may be expelled from the Union if he does not pay his dues and assessments? A. Yes, sir.

Q. But with respect to the Vountary Fund, you kept no copy? A. We keep no carbon copy of the Voluntary.

Q. And this little list that was kept by the man that assisted you, you retained solely for the purpose of being able to answer the inquiries of the people working there? A. That's right, sir.

Q. Now, Mr. Collom, did you ever tell anybody at Anheuser-Busch that they were required to contribute to the [477] Voluntary Fund? A. To my knowledge, I have never told anyone anything like that.

Q. Did anybody from Local 562, including Mr. Callanan, Mr. Lawler, Mr. Seaton, ever ask you or inquire in any respect with respect to who was contributing to the Voluntary Fund? A. No, sir.

Q. You had absolutely no inquiry at any time? A. No, sir.

Q. Were you present at a meeting of the Voluntary Fund about two months ago when a secret ballot was taken as to whether or not the Voluntary Fund should be continued? A. I was present at a meeting.

Q. And you were present when the ballots were voted 743 yeses and 5 noes? A. Well, I can't remember the exact figures, but it sounded something like that. Yes, sir, I was present.

Q. And that ballot was conducted by a yes no ballot, in which the people marked and bent them, and placed them into boxes; is that right? A. Yes, sir.

Mr. Randall: That's all.

Mr. London: I have a couple questions, Your Honor.

[478] **Cross-Examination.**

By Mr. London:

Q. Mr. Collom, you said that your rate of pay down at the brewery is what? A. Four dollars ninety-two and a half, I believe.

Q. And in addition to that, there was some money paid into your welfare program by your employer? A. I believe so.

Q. Do you know how much that is, sir? A. Offhand I don't.

Q. Would it be in excess of $2.00 an hour? A. Truthfully, I can't tell you.

Q. And you work a regular 40-hour week down there? A. That's our regular week.

Q. Sometimes there is some overtime? A. Yes, sir.

Q. And as a result of this money that you do make, I assume, sir, of course, that you file income tax returns and pay federal income taxes? A. Yes, sir.

Q. And as Mr. Randall asked you, it is a requirement that in order to remain a member of this Union, that you pay your union dues; is that correct, sir? A. That's correct.

[479] Q. And as a result of that requirement, sir, on your federal income tax do you deduct the amount that you pay in union dues? A. Union dues.

Q. And on your federal income tax, sir, the amount that you pay to the Voluntary Fund, do you deduct? A. No, sir.

Q. That is not required that you pay that so you cannot deduct it, can you, sir? A. That's correct.

Mr. Riddle: I will object to that as calling for a legal conclusion of this witness.

The Court: Be sustained. Be stricken. The jury will disregard it.

Q. (By Mr. London) You do not deduct your Voluntary Fund payments, do you, sir? A. No, sir.

Mr. London: Thank you. That's all.

Mr. Daly: I have no questions.

Mr. Nangle: I have one question.

Cross-Examination.

By Mr. Nangle:

Q. Mr. Collom, did you handle the collection of the cards for the United Fund? [480] A. Yes, sir.

Q. You distribute the cards to the men for whom you are the steward, for the United Fund; is that correct? A. Yes, sir.

Q. As a matter of fact, does the brewery request that you, alone, handle any types of collections that are had amongst your members down there? A. Well, I think it just has been the practice that the steward would handle any and all such things as that.

Q. As a more orderly procedure? A. Yes, sir.

Redirect Examination.

By Mr. Riddle:

Q. In your various collections, sir, specifically with respect to the one that Mr. Nangle asked you about, you have collected for the United Fund? A. It isn't a collection. You take the cards around, and it is deducted from our pay.

Q. You take the cards around to each of the—— A. Yes, sir. If they sign a card, there is a little box on

there, and you can mark in the amount you wish deducted from your pay over a period of time. That's how that is handled.

[481] Q. You take cards around to the people? A. Yes, sir.

Q. This is a voluntary thing for them? A. Yes, sir.

Q. How many of them have signed those United Fund deduction cards? A. Well, I think there's—offhand I can remember one gentleman that doesn't give.

Q. One gentleman doesn't give? A. There might be more, but right now I can only remember one for the United Fund.

Q. And they give to it and authorize to have it withheld from your paycheck? A. Yes, sir.

Q. And you only recall one who—— A. Well, let me—there might be more. As I say, one gentleman stands out in my mind for some reason, but there might be more. Truthfully, I can't remember right now if there are any more. I remember that one gentleman in particular.

Q. The fact is you don't keep a record of the people who contribute to the United Fund, do you? A. I don't keep a record; no.

Q. And you made no report to the union hall about that, do you? [482] A. No, sir.

Q. But you do make a report to the union hall about voluntary contributions into this Political Fund? A. Yes, sir; the sheet that I take to them.

Q. Now, on these sheets that you take to them, this is an accurate report of every person and every amount that that person has paid, isn't it? A. As well as we can make it, sir.

Q. Now, you were asked on cross-examination about whether or not anybody ever made an inquiry from the hall as to whether somebody is paying down here or not.

Do you remember that question being asked you? A. Yes, sir.

Q. Well, in fact, there is no purpose or no reason for such an inquiry to be made, is there, from the union hall?

Mr. Randall: Your Honor, I think this is argumentative.

The Court: He may answer. You may ask him. Go ahead.

The Witness: Well, I don't know what purpose or reason a person might have.

Q (By Mr. Riddle) Isn't it a fact that they would have all the information down there at the union hall they would need in order to determine who is paid and who hasn't paid? [483] A. Well, they could probably determine from our sheets if they wished to.

Q. Yes, sir. And that would eliminate any inquiry, would it not? A. I suppose it could be figured that way; yes, sir.

Q. Now, I believe you said a while ago, in answer to a question, that of all of the times that you have given out cards, these Voluntary cards—— A. Yes, sir.

Q. ——that you have never had anyone to refuse you. Were those the words that you used? A. I can't remember anybody telling me no.

Q. Well, did you use the words a while ago that, "No one ever refused me"? A. I could have said that. I can't remember exactly every word I said.

Q. When you said nobody had ever refused you, does the Court and jury understand from that, that you were asking them to sign the cards? A. Maybe I should have rephrased it. This is strictly a voluntary card. If they went to sign it, it is fine, and if they don't want to sign it, that's fine with me too. I put no pressure on them in any way, shape or form. If they want to sign it, the

card is presented to them. If they don't [484] want to sign it, that's fine. As I say, I can't remember any gentleman saying, "I don't wish to sign the card."

Q. All right, sir. Now, sir, you said that no one has —you weren't requested to collect from anybody in particular, and then you testified a little earlier that you were told three people weren't to be collected from. A. Yes, sir.

Q. For any purpose. A. Maybe when I said "any purpose," I didn't have this United Fund in my mind, if that is—what I was referring to was the assessments and the Voluntary.

Q. Well, when these people asked you if they owed you any money, what did you tell them? These three people? A. I told them that I was told—as well as I can remember, I told them that, "I have been told not to take any money from you."

Q. Did they say, "Well, we want to volunteer, give you some?" A. I don't remember them saying that to me; no, sir.

Q. Did they indicate to you that they wanted to give you any money? A. Only when they asked me the original time they saw these other gentlemen pay me their money, and they thought that they might have owed something, and I told them, as I have told [485] you now, that I was told not to take their money.

Q. Sir, in answer to Mr. Randall's question, you said that you voluntarily made these payments to the Union? A. Yes, sir.

Q. Is it also true that you voluntarily make your regular Union assessment payments? Don't you voluntarily pay them? A. Well, that's something that you pay if you want to be a member of 562 and follow the by-laws of 562. That is a required payment.

Q. But you pay the Voluntary, don't you?

Mr. Randall: Your Honor, that is argumentative.

Mr. Riddle: I am asking him the question, Your Honor.

The Court: Well, I do think, Mr. Riddle, that it is argumentative. He's given you the answer that he considers that he has to pay in order to be a member. All right. I'll sustain the objection.

Q. (By Mr. Riddle) Sir, of the people, ninety to a hundred down there that pay you these 50 cents a day, or two dollars and a half a week every week, do you think they'd pay that to you voluntarily?

Mr. London: I object to the form of that question, Your Honor.

The Court: Be sustained.

Mr. London: Also, it is repetitious. He's already [486] testified to that.

Q. (By Mr. Riddle) Let me ask you about this meeting that you supposedly attended. Have you ever heard of a Fund meeting before Mr. Randall asked you about it here on the stand this morning? A. Well, not Fund meeting.

Q. I am talking about F-u-n-d. A. Yes, sir, I understand. But I don't think—well, the term is—I've never been invited to a meeting called the Fund meeting, just those two words.

Q. Have you ever been invited to a meeting called the Political Voluntary Fund meeting? A. Well, truthfully, I can't remember what the wording would be on the notice we received. I can't remember the wording.

Q. You got your notices from the Union, didn't you? A. As well as I can remember.

Q. Yes, sir. Now, sir, during the period of time that you have been paying into this fund, have you ever been shown an audit of the records? A. No, sir.

Q. Has anyone ever told you how the money was spent? A. Well, not—no, we have never really sat down and had a penny by penny directory of how it was spent; no, sir.

[487] Q. Did any board of directors, or any committee, ever make a report to you about the handling of the Fund? A. Not a specific report such as you are speaking of, I don't believe, sir; no, sir.

Q. Sir, one other question. One last question. You were asked whether you took a deduction on your income tax for the amount of money you paid into this Fund. Who told you not to take the deduction because of that, or for that reason? You made an inquiry, didn't you? A. Well, I think—I don't remember myself making a specific inquiry. I think it got to be a common question, however. The answer got back to all of us. I think we are all aware that you can't deduct a voluntary on your income tax.

Q. Now, you said, "We all got the word back that we couldn't deduct it." Is that what you are telling the Court and jury? A. As well as I can remember. I know it was discussed amongst small groups of us at times. However, we got the answer, we all——

Q. What was discussed among the small group of you about this deduction? A. Well, some men were wondering if they could take it off their income tax.

Q. And were you wondering also? [488] A. Well, being unfamiliar with the law, I think all of us wanted a clarification on it one way or the other.

Q. Where did you go to get your clarification? A. Well, I didn't go to any specific place. However, we all seemed to—someone finally found out, or I guess we all assumed, or was finally——

Q. The Union told you, didn't they? A. No, sir, I can't remember whether or not the Union ever specifically told me that, in all honesty.

Q. Well, specifically, where did you get your information? A. I can't say I got it from one specific person or location.

Q. Well, then, if this question was raised by you and your fellows, the people down there at your place of work, about whether or not they could deduct it, why was that question raised? A. Well, now, this is long before I was a steward. We had this Volunteer.

Q. Why was it raised, and why were you concerned about it?

Mr. London: I object to the form of this question. It is leading and suggestive. It is calling for a conclusion. The witness has testified as to the inquiries being made.

The Court: Oh, he may answer, if he can.

[489] The Witness: I can't honestly say that I spoke to one specific person that told me yes, you can, or no, you can't. Now, where I finally decided that we couldn't, or where that word came from that we had such faith in, I honestly don't know who it was or where it came from.

Q. Sir, isn't it a fact that you were wanting to take the deduction if you could? Isn't that a fact? A. I don't want to take anything off my income tax that I haven't got coming to me.

Q. But if you could have taken a deduction, you wanted to do it. Isn't that correct? A. Well, I think any time I can take something from my income tax that I have coming to me, and don't take it, it seems like a waste of money.

Q. And you wanted to take this deduction if you could?

Mr. London: Your Honor, I am going to object to the argumentative nature of the question.

The Court: It will be sustained.

Mr. Riddle: That is all I have.

Mr. Randall: I have two or three questions.

Recross-Examination.

By Mr. Randall:

Q. Mr. Collom, you did not collect money for the United Fund, did you? [490] A. No money is handled. That is deducted from their pay.

Q. Deducted by Anheuser-Busch? A. That's correct.

Q. And when you get your check, do you have a voucher along with it? A. Yes, sir.

Q. And that contains a record of the money that is deducted? A. Yes, sir.

Q. And Anheuser-Busch, of course, sends reports to the United Fund? A. I would assume so.

Q. Transmitting to them? A. Yes, sir.

Q. That is exactly what you did with respect to the Voluntary Fund, isn't that correct, sir? Took your reports and the amount of money conforming with collections? A. Yes, sir.

Q. Now, you testified that some of these men fell behind both in their assessments and in the Voluntary Fund; isn't that correct? A. Yes, sir.

Q. And you had an inquiry concerning the assessments only from Mr. Burke? [491] A. That's correct.

Q. And who is Mr. Burke? A. Mr. Burke is the Secretary-Treasurer of 562.

Q. And you never received any such inquiry concerning the people who fell behind on the Voluntary Fund? A. Never.

Mr. Randall: That's all, Your Honor.

The Court: Anything else, Mr. Riddle?

Redirect Examination.

By Mr. Riddle:

Q. Sir, do you know if these gentlemen who were delinquent caught up on their dues? Regular dues? After they talked to Mr. Burke? A. Not all of them.

Q. Did some of them catch up? A. Some of them.

Q. Did they also catch up on their Voluntary Political dues or contributions? A. Yes, sir.

Q. Following the discussion between them and Mr. Burke, they caught up, or some of them did on both their union assessments and on their Voluntary Political Fund? A. Yes, sir.

Q. Do you think he may have talked to them about the [492] Political Fund also?

Mr. Daly: I will object to that, Your Honor.

The Court: Be sustained.

Mr. Riddle: All right.

The Court: Is that all?

Mr. Randall: That's all, Your Honor.

The Court: You may be excused.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

EMIL CHARLES ENDERMUHLE,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, would you state your full name for the Court and jury? A. Emil Charles Endermuhle.

Q. What is your last name? A. Endermuhle.

Mr. Riddle: That is E-n-d-e-r-m-u-h-l-e?

A. Right.

Q. Are you a member of Local 562 Pipefitters? A. I am.

[493] Q. Are you a foreman? A. Yes.

Q. What job are you working on now? A. Moloney Electric.

Q. Sir, during the year 19 and 63, were you a foreman out at the McDonnell plant? A. I was.

Q. And what construction company were you working for? A. General Installation Company.

Q. General Installation Company? A. Right.

Q. How long did that job last, approximately? A. I was out there approximately two years.

Q. All right. Were you the foreman on that job? A. Over the whole job; yes.

Q. How many people did you have on your crew? A. I think the peak crew was close to a hundred.

Q. All right. And it dropped off, I guess, at times? A. It would fluctuate.

Q. Sir, were you a steward at the same time? Union steward? A. Partially.

Q. What do you mean partially? A. Well, as the job got larger, we got a steward on the [494] job.

Q. Now, how large does a job have to get before you have a steward? A. Well, normally, under union rules, four men.

Q. Sir? A. Four men.

Q. Four men? You mean any job over four men you have a steward? A. Normally, yes.

Q. All right. Well, you were steward on this job almost all the time, then, weren't you? A. No. We got a steward after we got up around thirty or forty men.

Q. I see. And that was a different person than you? A. Right.

Q. Who was the steward then? A. Richard Dolan.

Q. Richard—— A. Dolan.

Q. All right. Sir, in connection with your work out there, did you make certain collections from people working for you? A. I did.

Q. And how often? [495] A. Well, normally once a week.

Q. What day in the week? A. Well, normally on a Monday.

Q. How long have you been doing that, making collections each Monday? A. You mean prior to '63 or——

Q. Well, yes, prior to '63. A. Well, I imagine about ten or twelve years.

Q. All right. Have you been doing it since 1963 also? A. Yes.

Q. Now, were you furnished forms for the collection of the money that you did collect? A. Yes, we had a form.

Q. And in 19 and 63, where did you get that form? A. I received it down at our Welfare office.

Q. You got it at your Welfare office? A. Yes, sir.

Q. Of the Union's headquarters? A. Yes, sir; at the union building.

Q. And who in the Welfare office gave it to you? A. I can't recall now. At the time it seemed like it may have been Looney.

Q. Looney? A. Dan Looney; yes.

[496] Q. Dan Looney. Now, at that time, early 1963, did you receive a number of cards that are called Voluntary Contribution Cards, or Political cards? A. I did.

Q. Who did you get them from? A. I believe I received those from the same man. I'm not quite sure on that though.

Q. Well, your best judgment is you received them from Mr. Looney also? A. I believe so; yes.

Q. Did you get any instruction as to what to do with the cards after you did receive them? A. I was instructed to have the men sign the cards, the men that were willing to sign.

Q. All right. And did you proceed to do that? A. I did.

Q. And after you got the cards signed, what did you do with them? A. The next time I stopped by down there, I turned them in.

Q. I see. Sir, you were working on the McDonnell job, were you, collecting union assessments? I don't mean money that comes into the Political Fund, but had the checkoff system started at that time? [497] A. I believe I went out there in '62, and at the time we didn't have the checkoff system then, and I believe I was picking up assessments then.

Q. At that time, how did you handle the collection of all the monies that you received? Can you tell the Court and jury just how you proceeded to do that? A. Well, what I received I turned in to the union hall.

Q. How did you go about collecting it? A. Well, usually the men come up to you Monday morning, usually before you start to work, and give it to you.

Q. Well, would they ask you how much they owed? A. A few do. Normally most men know what their dues were, and assessments, at the time.

Q. Well, at that time, back before the checkoff system began, did the people working for you give you all their money at one time? That is, the regular union dues and the Political Fund money? A. Most men paid their dues at the hall.

Q. All right. A. A lot of men at times would give you their book to bring in, save them a trip going in to the hall.

Q. All right, sir. After you collected the money, the cash that you collected, what did you do with it? A. I brought it down to the union hall.

[498] Q. All right, sir. Now, did you keep pretty accurate and thorough records of the people who were working and the number of hours they worked each day? A. The only records I kept was in my time books.

Q. Well, did you keep records on this form, on the Pipefitters Voluntary Fund form? A. No. I just marked down on the form what the men contributed, and turned that in.

Q. Well, did you put down the number of hours they worked on it? A. Sometimes we would mark the hours down.

Q. Well, let me show you——

(Thereupon, Government's Exhibit No. 102 was marked by the reporter for the purpose of identification.)

Q. I show you what's been marked Government's Exhibit 102, and ask you to examine them and see if those are the cards or the forms that you prepared? A. I'd say these are all mine.

Q. All right, sir. Now, sir, when you were collecting this money, did you make a notation on the forms that you prepared indicating that a person was behind, or that he owed money, if he didn't pay you? A. I did; yes.

Q. And you would make that notation right on the form [499] that you sent in to the union office? A. At times, yes.

Q. And you'd put down the amount he owed, and who it was that owed it? A. Right.

Q. All the time that you were out there, did you have anybody who refused to pay you, or give you trouble about collecting? A. I can only recall one man that didn't want to.

Q. One man who gave you trouble? A. There was no trouble.

Q. Who was that man? A. A man named Copeland.

Q. C-o-p-e-l-a-n-d? A. That's his name; yes.

Q. Well, what did Mr. Copeland do that was different? A. He didn't do anything different.

Q. Well, did he fail to pay? A. Yes. He didn't pay.

Q. Sir? A. He didn't pay; seemed like he was broke all the time.

Q. Well, did you ask him for his money? A. Several times.

Q. What did he tell you? [500] A. Well, he'd usually say when he gets some money he will go down and pay it himself.

Q. All right. How often did this happen? A. I'd say four or five times, and finally I just quit asking him.

Q. All right. And how did you report him into the hall then? A. I didn't report anything. I just marked the sheet there.

Q. Just marked the sheet, "No pay"? A. That's right.

Q. How long did he work with you out there? A. I can't recall. I'd say he was out there approximately three or four months.

Q. Well, did Mr. Copeland claim to you that he paid at the hall on occasions? A. He did say that he was going to the hall, but whether he did or not, I don't know.

Q. Sir, do you recall anybody else that gave you any trouble about these collections? A. Nobody on no job of mine; no.

Q. Of all the time that you have been collecting, he is the only person though who gave you some trouble? A. I wouldn't call it trouble.

[501] Mr. London: Your Honor, I will object to the question.

Mr. Riddle: I will withdraw the question.

The Witness: There was no force exerted or anything for him to have to pay, so, therefore, there wouldn't be any trouble.

Q. (By Mr. Riddle) Well, what type of conversation did you have with him? Can you tell the Court and jury that? On these Monday mornings when you were doing your collecting? A. It wasn't always Monday. We say normally Monday. Sometimes it would be Tuesday or Wednesday, but it was more in a joking way. I kidded him about it.

Q. What did you say to him, and what did he say to you? A. I'd usually kid him, I'd say, "Leroy are you going to come up with something?" Or something on that order, in a joking way, because normally the men know mostly. You didn't have to go around asking them or saying anything. It was strictly a voluntary thing.

Q. They'd come up to you? A. Definitely; yes.

Q. Now, during the time that you were collecting out here at the McDonnell plant, did you, on occasion, advance any of your people some money so that they could pay? A. Well, once in a while you'd have a guy hit you for [502] a little loan.

Q. For what purpose? A. Maybe for the Voluntary Fund, or maybe they might just be short on cash for the week, maybe to buy food or something.

Q. Sir, did you loan any of your people money for the purpose of paying this Voluntary Fund? A. I couldn't definitely state that that is what I would loan them money for. I just marked them down if they didn't pay it.

Q. You marked it down that they owed? A. Owed; yes.

Q. What did you do the next week for the man that owed you for the previous week? A. Normally the next week they'd come in and say, "Here's what I owe you."

Q. All right. Now, sir, on the job out at McDonnell, did you have people working there who were both members and out-of-towners? A. I did.

Q. Did you make a different collection from each of them, or from those groups? A. Yes. The out-of-town men, their Voluntary Fund was a little higher than ours.

[503] Q. How much higher? A. Well, they paid $2.00 a day, and I think at the time we were paying a dollar a day. I just don't recall exactly what month it changed, or anything.

Q. Was there any—Did you make any explanation to them as to why there was a different rate for the out-of-towners than the Local? A. No, I didn't, because most men accepted this. They knew that when they came on the job. I didn't have to explain anything.

Q. They knew what the rate was before they began to work? A. I would say so.

Mr. Riddle: I have nothing further at this time, Your Honor.

The Court: All right.

Cross-Examination.

By Mr. Randall:

Q. Mr. Endermuhle—Am I pronouncing that correct? A. Endermuhle.

Q. Mr. Endermuhle, you are a foreman at the present? A. Yes, sir.

Q. And where are you now, sir? A. Moloney Electric.

[504] Q. And what is your rate of pay, sir? A. $6.60 an hour.

Q. $6.60. And do you work considerable overtime out there? A. We are on a 9-hour day out there at Moloney.

Q. And what, sir, do you make per week? A. On this particular job, I am drawing approximately $350 a week.

Q. Now, sir, have you been a foreman a long time? A. Yes, sir.

Q. And as I understand it, for a brief period of time you also acted as a steward? A. This is correct.

Q. And you made collections from people, in the early years before you got checkoff, you collected their assessments, or at least part of them? A. This is correct.

Q. And some of the people went to the hall and paid their dues and assessments? A. This is correct.

Q. And the dues and assessments are required by your By-Laws and Constitution? A. This is true.

Q. And if they are not paid, the By-Laws and [505] Constitution provide for the expulsion of the man; isn't that correct? A. This is correct.

Q. And also your contract, your union contract provides that in order to work, they must either be members of the union or become members if that's offered to them, doesn't it? A. This is correct.

Q. After they are employed, they have a period of thirty days to become a member? A. This is correct.

Q. Or they may be fired if they do not? A. Right.

Q. Now, on this Voluntary Fund, you say that you collected that on occasions. Did you ever—what did you tell the men with respect to the Voluntary Fund? Did you hand out any cards to any new men? A. I did.

Q. And when you did that, what did you say to them and what did you do? A. I merely asked them to sign the cards if they cared to contribute to our Fund. And all of them went along with it.

Q. Did they read the card? A. Yes.

Q. And does the card say that it is purely voluntary, [506] and they may quit at any time? A. It does.

Q. And as a foreman down through the years, sir, have you ever put any pressure on any man to contribute to this Voluntary Fund?

Mr. Riddle: I will object to that use of the word "pressure." That is a conclusion, Your Honor.

The Court: All right. Sustained as to form.

Q. (By Mr. Randall) Have you ever threatened anybody if he did not contribute?

Mr. Riddle: I object to that. Threatening is also a conclusion.

The Court: Well, it may well be, but I think that he may ask that question.

The Witness: No, sir.

Q. (By Mr. Randall) Have you ever told any man that if he did not contribute to the Voluntary Fund that you would see that he was fired? A. Never.

Q. Have you ever told any man that if he did not contribute to the Fund that you would see that he didn't get overtime, or anything of that nature? A. Never. And I've never heard of it.

Q. Has anyone in Local 562, Mr. Callanan, Mr. Lawler, [507] or Mr. Seaton, ever said anything to you with respect to this type of statement to the men that worked for him? A. Never.

Q. Have you attended, sir, meetings of the Voluntary Fund that were held on Sunday? A. I have never been to Sunday meetings; no.

Q. You never were there. And, sir, what is your political affiliation? A. I'm primarily an independent voter.

Q. Now, with respect to this man Copeland, where did he work for you, sir? A. At McDonnell Aircraft job.

Q. At the McDonnell Aircraft job? A. Right.

Q. And as I understand, he didn't pay to the Voluntary Fund? A. To the best of my knowledge, he never did.

Q. And how long did he work for you out there? A. I'm roughly guessing, three to four months.

Q. And what occasioned his departure? A. He quit of his own accord.

Q. He just quit? A. Yes.

Q. While he was working for you and not paying to the [508] Fund, did you make any statement to him of any type of all that if he didn't pay he would be fired? A. Never.

Q. Did anyone make any such statement to you with respect to this man? Did anyone say anything to you at all concerning whether he would be fired if he didn't pay? A. Never.

Q. Did anyone make any statement to you at all with respect to the fact that he was not paying? A. Never. No comments.

Q. Have you always contributed to the Voluntary Fund? A. I always have; yes.

Q. Have your contributions been voluntary? A. Strictly.

Q. Are you still contributing? A. Yes.

Mr. Randall: That's all.

The Court: Anybody else have any questions?

Mr. London: No question, Your Honor.

Mr. Daly: No questions, Your Honor.

The Court: Mr. Riddle?

Mr. Riddle: Your Honor, I don't believe I have anything further of this witness now, but if we could, after the noon recess I might want to call him back and examine him.

[509] The Court: Well, all right. I guess we will recess now until quarter to 2:00. Members of the Jury, bear in mind the admonition I have given you heretofore. Just a minute. Would you step up, Mr. Riddle?

(Witness excused.)

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[585] **NORMAN BAKER,**

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, your name is Norman Baker? A. Yes, sir.

Q. And your address is Cape Girardeau, Missouri? A. Yes, that's true.

Q. Mr. Baker, how old are you? A. I'm thirty-seven.

Q. And at the present time, where are you employed? A. I work for Mississippi River Fuel across the river.

Q. By "across the river," you mean over in the East St. Louis area? A. Well, it is down by the Jefferson Barracks Bridge.

Q. All right. What kind of work are you doing there for that company? A. We are laying a pipeline over there.

Q. Do you have a particular trade or skill? A. Yes, I am a welder.

Q. All right. Sir, at the present time are you a member of any union? A. Yes, I am.

Q. And what union are you a member of? [585] A. I belong to the 798 in Tulsa, Oklahoma.

Q. 798, Tulsa, Oklahoma. And what is the name of that union or local? A. That's the Pipe Liners Local.

Q. Pipe Liners Local. Sir, can you tell the Court and jury if that's affiliated with the United Association of Pipe Fitters? A. Yes, it is.

Q. How long have you been a member of that local? A. About two years now.

Q. Sir, before your membership in 798 in Tulsa, were you a member of another local? A. Yes. I belonged to Local 318 at Cape Girardeau, Missouri.

Q. How long a period of time were you a member of the Cape Girardeau local? A. Around five years.

Q. That would be roughly from about 19 and 60 up to 1965 or '66? A. Yes.

Q. Sir, as a welder, or pipefitter, did you receive any training to prepare you for your work? A. Yes. I went to school for it.

Q. And where did you go to school? [586] A. I attended Jackson Welding School here in St. Louis.

Q. All right. Now, at the time that you were a member of Local 318 down at Cape, sir, did you have occasion to work on any jobs that were under the jurisdiction of the St. Louis Pipefitters, namely, Local 562? A. Yes.

Q. Can you tell the Court and jury what jobs you worked on that were under their jurisdiction? A. I worked on one job in Mexico, Missouri, and I worked a couple jobs in St. Louis, one, Busch's brewery, and another small job, and I also worked a job in Louisiana, Missouri, for them, and one in Cape Girardeau, Missouri.

Q. These jobs that you worked on under 562 jurisdiction, can you tell us about what date they were, and if I may, I'll mention them one at a time. The union down at Cape Girardeau, can you tell us about what date that was? A. Well, I don't know the exact dates. It is approximately two years ago, before I went into the Pipe Liners.

Q. Is that the last job that you worked on? A. Yes.

Q. As a member of 318 and under 562's jurisdiction? A. Yes, sir.

Q. How long did you work on that job? A. I'd say a couple months.

[587] Q. Now then, the job that you worked on before Cape, where was that, if you recall? A. I don't recall in just what order they were in.

Q. All right. Well, can you tell us about what year it was that you worked on the job at Louisiana, Missouri? A. I'd say the Louisiana job was probably around '64.

Q. '64. All right. Now then, what about the job down at the Busch Brewery here in St. Louis? A. I am not sure. I'd say around '65.

Q. All right. And the Mexico, Missouri, job? A. I'd say it was around '63.

Q. All right. During the time that you were a member of the Cape Girardeau local, did you work on jobs under their jurisdiction? A. I think I worked three jobs.

Q. Three jobs under the Cape Girardeau—— A. Three or four; yes, sir.

Q. And where were those jobs located area-wise? A. One was in Sikeston Hospital, and I believe I worked a while for Burke Heating & Plumbing.

Q. Burke Heating & Plumbing, in Cape Girardeau? A. Yes.

Q. All right. A. And they had a job, I don't recall just who it was [588] laid a sewer line there, but I don't remember the man's name, but I worked on that job.

Q. Do you recall any other jobs that you worked on that were under the Cape's jurisdiction? A. No, sir, not offhand I can't.

Q. All right.

(Thereupon Government's Exhibits Nos. 112 and 113 were marked by the reporter for the purpose of identification.)

Q. Now, sir, as a member of the Cape Girardeau local, did you pay dues and assessments to that union? A. Yes, I did.

Q. Do you recall what they were? A. The assessments for 318 were a dollar a day.

Q. One dollar per day? A. And the dues, I don't recall just what the dues were at this time. They were five dollars or six; something like that.

Q. Per month? A. I'm not sure of that.

Q. All right. But you paid an assessment of $1.00 a week and some regular dues.

Mr. Daly: I object to that. $1.00 a day.

Mr. Riddle: Well, $1.00 a day. I am sorry. That's right. Thank you.

[589] Q. (By Mr. Riddle) Now, sir, during the period of time that you were still a member of the Cape local and worked on jobs for 562, did you continue to pay the Cape Girardeau assessments and dues? A. Yes, sir.

Q. The full amount? A. Yes, sir.

Q. Sir, I will hand you what has been marked Government's Exhibit No. 112, and ask you to examine it and see if you can identify it for the Court and jury, please? A. Well, it's a Vountary Contribution Fund here where something I signed.

Q. Did you sign it? A. Yes, sir, that is my signature.

Q. And what is the date that appears on it? A. January 10 in '63, sir.

Q. Is it witnessed? A. Yes, sir.

Q. Do you know the person whose name——

Mr. Randall: Your Honor, I am going to object until the exhibit is admitted into evidence, as to his bringing out the contents of the exhibit.

The Court: Well, I think he can say who witnessed it.

Q. (By Mr. Riddle) Sir, do you know the person's name [590] who witnessed it? A. No, I don't.

The Court: What is the exhibit number?

Mr. Riddle: Your Honor, that is Exhibit 112.

Q. (By Mr. Riddle) Do you remember when this card that is labeled "Voluntary Contribution Agreement" was given to you? A. No, sir, I don't remember that.

Q. All right, sir. Sir, did you sign it? A. Yes.

Q. Will you tell the Court and jury why you signed it? A. Well, I was under the understanding that when you worked under 562's jurisdiction, you paid them their adoby—they call it adoby—$2.00 a day, and they give you this card to sign as you come in to show that you agree to pay that.

Q. You used the word "doby". Is that d-o-b-y? A. I'm not sure of that.

Q. How are you pronouncing it, sir? A. I just always just pronounced it adoby.

The Court: Dogie, isn't it?

Mr. Riddle: Doby.

A. Doby.

Q. All right, sir. Sir, are you familiar with the term "boy"? Have you heard it used by people on jobs, [591] pipefitters, your associate? A. Yes, sir.

Q. Before you signed this card, that is, Government's Exhibit 112, had you heard about such cards being in existence before then?

Mr. London: I object to this, Your Honor, as calling for hearsay.

The Court: What have you got to say about it?

Mr. Riddle: Well, it very possibly would be hearsay, but the exception would be it is not offered for the purpose of proving the existence or the fact that there was such a word around, but for the purpose of clarifying and explaining the conditions that existed and the terminology used by members working on the local jobs.

The Court: All right. It will be overruled. He may testify.

The Witness: Had I heard about this card?

Q. (By Mr. Riddle) Yes. A. No, sir. Just that you just paid them their money.

Q. Sir, at the time that you signed this card, were you told that, or did you understand that signing this card was a condition precedent to your working on one of the 562's jobs?

Mr. Randall: Your Honor, I am going to object to that question. It is leading and suggestive.

[592] The Court: Be sustained.

Q. (By Mr. Riddle) All right. Well, now sir, at the time that this card was presented to you, do you recall if it was presented to you by a foreman on a 562 job, or a steward? A. I believe these cards were given out by the steward.

Q. By the steward of the Union? A. Yes, sir.

Q. And that would be a steward of Local 562? A. Yes, sir.

Q. All right. Now, after you signed this card, did you continue to make—did you then at that time continue to make payments to the steward on these jobs? A. Yes, sir.

Q. And how much per day, or how much did you pay? A. Well, the latter part of the time was $2.00 a day.

Q. And during the earlier part, that would be in January of 1963, do you recall what it was per day? A. Well, it was a dollar a day.

Q. All right. I'll show you what has been marked Government's Exhibit No. 113, and ask you to examine that and see if you can identify it? A. It's the same as the other where I signed to pay the $2.00.

Q. And what is the date of that? Can you tell the [593] Court and jury? A. It is May 17, in '65.

The Court: What is that exhibit number?

Mr. Riddle: This is Exhibit No. 113, Your Honor.

Sir, do you recall the occasion for signing a second card that is labeled or headed "Voluntary Contribution Agreement"?

A. I believe each job you started, that you signed one of these cards.

Mr. Riddle: All right. If it please the Court, at this time the Government would like to offer into evidence its exhibits Nos. 112 and 113.

Mr. Randall: Your Honor, may I be permitted to see the exhibits first?

The Court: Sure.

Mr. Randall: Thank you.

(Defense counsel look at exhibits.)

Q. (By Mr. Riddle) Now, sir with respect to these payments that you have described and characterized as dobys, how did you learn that the doby had been increased from $1.00 a day to $2.00 a day? A. I just heard that they had increased the doby from a dollar to two dollars. Just when they increased it, I don't recall, and maybe some of the local men told me. I'm not sure.

Q. And did the steward on the job tell you that, [594] sir, if you know?

Mr. Daly: I will object to that; leading and suggestive.

The Court: All right. Don't lead him.

The Witness: I don't recall.

Q. (By Mr. Riddle) All right, sir. Now, during the period of time that you were paying this $2.00 a day doby into 562, were you paying your regular dues and assessments to the Cape Girardeau local? A. Yes, I was.

Q. Now, sir, at the time that you were working on a job down at Cape Girardeau, Cape College, do you recall that period of time? A. Yes.

Q. And how far did you live from that job where you were working there at Cape? A. Oh, I would say about a mile and a half.

Q. Now, sir, were other members of the Cape local working on that job? A. Yes, sir, they were.

Q. Now, during that period of time, did you pay the $2.00 doby to stewards on the 562 job? A. I don't recall if the steward collected the money, or the man that I was working for. I remember one time that [595] the boss, I gave the money to him. I don't remember now if I paid their steward the money or not. I do recall paying the man that is there the money.

Q. In any event, you paid the money to somebody? A. Yes, sir.

Q. Did you ever get a receipt? A. No.

Q. At any time when you made this $2.00 a day doby payment? A. No, I have never seen a receipt.

Q. When you paid your dues and assessments at your own Local 318, did you get receipts? A. Yes, sir.

Q. And had a book showing current payments? A. Yes.

Q. Now, sir, have you worked at jobs around over the country for other locals other than 318 and 562? A. Yes, I have.

Q. Are you familiar with the term "travel card"? A. Yes.

Q. What is a travel card? A. It is a card issued by your home local, which allows you to go to another local and work out of their jurisdiction.

Q. All right. And what is the procedure used for [596] obtaining the travel card, and just how do you go about using it? A. Well, in my case I went to the business agent and tell him I'd like to—like you don't have any work in your jurisdiction, and you want to go someplace, tell him you'd like to go to another local and obtain some work, and he will issue this travel card to you, and you deposit it in the other local.

Q. All right, sir. And how much does the travel card cost you per month? A. The travel card is $8.00 per month.

Q. Sir, did you get a travel card when you worked on Local 562 jobs? A. No, sir.

Q. Sir, after you were working on the job down at Cape Girardeau, did you travel or did you move to another job? A. Yes.

Q. Where did you move to? Or what other job did you go to? A. I went from there to a pipe line job in Jackson, Missouri.

Q. All right. And who was that for? A. That was for Cape Construction.

Q. Were you under the jurisdiction of either of the [597] other locals at that time? A. 562 had charge.

Q. All right. Did you pay the doby while you were on that job? A. I don't think we did.

Q. On the job at Jackson? A. No, sir. I don't think we paid it.

Q. Do you know why you didn't?

Mr. Daly: I object to that, Your Honor. It calls for a conclusion on the part of this witness.

Mr. Riddle: He can tell why he didn't pay it.

The Court: He can say what he did.

The Witness: If I remember right, I don't recall just what the reasons were—told us we didn't——

Mr. Daly: This is hearsay, Your Honor.

The Court: All right. Be sustained.

Q. (By Mr. Riddle) Just state why you didn't pay it, if you recall. A. Well, for some reason I didn't require it, if I remember correctly.

Q. Did you want to voluntarily pay it to anyone? A. No, sir, I didn't want to volunteer for it.

Q. All right. Sir, these cards that you signed, did you sign those of your own free will and volition? [598] A. Well, I knew I had to sign them, yes, sir, if I wanted to work.

Q. Did you want to make the payment of these dobys? A. Well, I never hardly thought of it in that way. It was just, it was my understanding if I wanted to work and wanted to get a job, that I had to sign, so I just went ahead and signed it.

Q. What about the payments? A. Well, you had to make payments too.

Q. All right, sir. Now, sir, did you, at the time that you left your Local 318, did you join another local? A. Yes, I did.

Q. And while you were working at 318, did you go to Nashville, Tennessee, and work on a job? A. Yes, sir.

Q. Do you recall what that job was? A. It was for DuPont Company in Nashville.

Q. All right. Did you work under the jurisdiction of a pipefitters local in Nashville? A. Yes, sir.

Q. And did you pay them a doby?

Mr. Randall: Your Honor, I am going to object to this as being immaterial and irrelevant.

The Court: Be overruled.

[599] The Witness: No; just a travel card.

Q. (By Mr. Riddle) Just a travel card. And that was $8.00 a month? A. Yes, sir.

Q. All right, sir. Well, sir, will you tell the Court and jury why you left the Cape Girardeau area and went to Nashville, Tennessee, to work for another local?

Mr. Randall: I am going to object to this as being irrelevant and immaterial.

Mr. Riddle: It is very material and very relevant, Your Honor.

The Court: All right. Be overruled.

The Witness: That was the closest place that I could get a job at that time.

Q. (By Mr. Riddle) I see. Did 562 have any jobs going on in your area in southeast Missouri? A. Yes, sir.

Q. Could you get a job with them? A. No, sir.

Q. All right, sir. Now, have you worked at any other place other than Nashville while you were a member of Local 318? A. Yes, sir, I have.

Q. What are the other places? A. Well, I worked in Denver, Colorado, and I can't recall.

[600] Q. Well, in Denver, Colorado, was that under the jurisdiction of a local pipefitters union out there? A. Yes, sir, it was.

Q. Did you pay the eight-dollar travel card to them? A. Yes.

Q. Did you pay them any doby? A. No, sir.

Q. Did you pay this so-called doby to any other local anywhere in the country, other than 562?

Mr. Randall: I will object, Your Honor; irrelevant and immaterial.

The Court: It will be overruled.

The Witness: No, I haven't.

Q. (By Mr. Riddle) All right, sir. Sir, during the period of time that you were working on the job down at Cape, and under the jurisdiction of 318, did you make any voluntary political contributions to your local union there, 318? A. No.

Q. Did they ever ask you to? A. I don't recall that they ever asked me.

Q. All right. Sir, did you ever make any voluntary, or make any contributions to 562, or to any of their stewards, or to their foreman, except for the times that you were working on their job? [601] A. I have never given them anything other than the adoby money.

Q. Sir, are you familiar with the term "assessment"? A. Yes, sir.

Q. What do you understand an assessment to be? A. Well, it is the same as this doby. A certain per cent, like you call a two-dollar a day, you call that an assessment. In some places locals deduct a certain per cent from your paycheck, which is an assessment.

Q. Sir, are you using the words assessment and doby interchangeably? To you do they mean the same thing? A. They mean the same thing to me; yes, sir.

Q. Sir, does this doby, as you use it, to you mean the privilege to work on a 562 job?

Mr. London: I will object to the form of the question.

The Court: Be sustained as to the form of the question.

Q. (By Mr. Riddle) Sir, where did you first hear the word "doby"? A. Oh, it is—when I first began the trade—it is a word used by craftsmen, and I picked it up from them.

Q. Was this down in the Cape Girardeau area? A. Yes, sir.

[602] Q. All right. Sir, you testified that you are no longer a member of Local 318 down in Cape. You are a member of a local out in Tulsa, Oklahoma, No. 798. I believe you also testified that your residence is still Cape Girardeau, Missouri? A. Yes, that's true.

Q. Will you tell the Court and jury why you transferred your membership from Cape to 798 out in Tulsa?

Mr. Randall: Your Honor, I will object to this as irrelevant and immaterial.

Mr. Riddle: Your Honor, it is very relevant and material.

The Court: Well, come up.

(Thereupon, the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury.)

The Court: What is the relevancy of it?

Mr. Riddle: The relevancy of it is that he left because he was objecting to paying $2.00 a day for the right to work on a job that is a mile or so from his home there in Cape Girardeau. He just got tired of paying this doby for those jobs. For that reason he transferred his membership.

Mr. Randall: I don't see what this has to do with 562, to transfer his membership from 318.

Mr. Riddle: That was to get away from 562 jobs and the payment of these dobys.

[603] The Court: Well, what does that prove?

Mr. Riddle: Well, Your Honor, it tends to prove that this is a man who did not want to continue to voluntarily pay into the Fund.

The Court: I see. OK. The objection will be overruled.

Mr. London: May we add to the objection, Your Honor, merely because it was his understanding is in no way binding upon any of the defendants.

The Court: Well, first of all, Mr. London, that is something to bring out on cross-examination.

Mr. London: I want the record to show it at this time, at this point, as an additional ground for our objection.

The Court: Well, I am overruling it.

(Thereupon, the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Did you understand the question, sir?

The Witness: Would you repeat it for me?

(The question was read by the reporter as follows: "Will you tell the Court and jury why you transferred your membership from Cape to 798 out in Tulsa?")

A. My reason for transferring was that I was constantly working out of town, and if I was going to work out of town, I could make more money working pipe line work, more money than I [604] could in the building trades, so I just transferred my book into that local.

Q. Sir, did it have anything to do with——

Mr. London: I object to the form of this question, Your Honor.

The Court: Be sustained.

Q. (By Mr. Riddle) Have you paid this doby since you left, or since you joined 798? A. No, just dues.

Q. Just dues. Sir, all the time that you were paying the doby into 562, did you ever pay it by check? A. No.

Q. Always in cash? A. Yes, sir.

Q. Never got a receipt? A. No.

Q. Sir, were you ever notified—well, strike that. Did you ever attend a meeting of the membership of Local 562? A. No, sir.

Q. Have you ever seen a notice of a meeting? A. No, sir.

Q. Sir, were you ever sent a notice of a meeting from 562, or anybody connected with 562, relating to the handling of the money that was paid into this Voluntary Political Fund? [605] A. No, sir.

Q. Do you know how the money was used? A. No, I don't.

Q. Did anyone ever tell you how it was used? A. No, sir.

Q. Did you ever ask? A. No.

Q. Why didn't you ask?

Mr. Randall: Your Honor, I am going to object to his mental processes as to why he wouldn't do a certain thing.

The Court: He may answer.

The Witness: I always felt it was better that I didn't ask.

Q. (By Mr. Riddle) Can you explain that answer?

Mr. London: I will object to that, Your Honor. That is a roving commission and conclusion.

The Court: All right. I will sustain the objection to that.

Mr. Riddle: We have nothing further, Your Honor.

Mr. Randall: Your Honor, I request grand jury testimony or statements of this witness.

Mr. Riddle: There is no grand jury testimony.

The Court: Do you have any statement?

Mr. Riddle: No.

[606] The Court: Let the record show there were no grand jury notes or no statement.

Members of the Jury, I am going to give you about a five-minute recess. I have an arraignment I want to take care of. You may step down, Mr. Witness.

(Following a brief recess, Norman Baker, having previously been sworn, resumed the Witness stand, and the further following proceedings were had before the jury:)

The Court: Who is going to do the interrogation?

Cross-Examination.

By Mr. Daly:

Q. Mr. Baker, prior to the time that you came in here this morning to testify, did you talk to someone about this case? A. Some of the boys asked me about it on the job.

Q. I mean somebody from the United States Attorney's office, or an F. B. I. agent, or one such as that? A. Yes, I have.

Q. And at the time you talked to them, were they taking some notes from your statement? A. Yes, they were.

Q. Were you asked to sign anything at the time you finished? A. I don't—No, I don't think I did.

[607] Q. But they did take some notes of what you had said? A. Yes.

Q. When was this? Could you tell us? A. I believe this was Thursday.

Q. Last Thursday you talked to them? A. Yes.

Q. This is Monday, and you are talking about—— A. Yes.

Q. This is Monday, and you are talking about Thursday. Is this the first time you talked to anybody about the matter? A. Yes.

Q. Now, you have identified what's been marked as Government's Exhibits 112 and 113 as photostats of cards that you had signed; is that correct? A. Yes.

Q. Do you now recall signing both of those cards? A. Well, I don't recall signing them, but they are my——

Q. Is that your signature? A. Yes.

Q. You don't say this is not your signature, do you? A. No, it is not——

Q. Let me hand you what's been marked Government's Exhibit 113, and ask you to read this, if you will please. A. You mean the whole thing here?

[608] Q. Yes, sir. A. It says, "I, the undersigned, of my own free will and accord, desire——

The Court: A little bit slower, Mr. Baker.

Mr. Daly: Would you just start from the top? Everything that is on the card. A. Oh, all right. It says, "Voluntary Contribution Agreement."

It says, "I, the undersigned, of my own free will and accord, desire to make regular contributions to the Political, Education, Legislative, Charity and Defense Fund which has been established and will be maintained by persons who are members of Local Union No. 562.

"I, therefore, agree to hereafter contribute $2.00 per 8-hour day to said fund and authorize my contributions to be used and expended by those in charge of the fund, in their sole judgment and—for political, educational——

The Court: You left out "discretion," did you not?

The Witness: Yes. "—discretion for political, educational, legislative, charity and defense purposes."

It says, "I understand that contributions are voluntary on my part and that I may revoke this agreement by a written notice to that effect mailed to the fund or to persons in charge thereof. I also understand that my contributions are [609] no part of the dues or financial obligations of Local Union No. 562, and that the union has nothing whatsoever to do with this fund."

Q. Now, did you sign that card? A. Then my signature.

Q. Did you read that card at the time that you signed it? A. No, never read it.

Q. You didn't read it prior to the time that you signed it? A. No.

Q. How about the other card you signed in 1963, which is Government's Exhibit 112, that you indicated you signed? Did you read the card on that occasion? A. No.

Q. You just signed the card on both occasions without reading it; is that correct? A. Yes, sir.

Q. You indicated while you were working under 562 jurisdiction, you were still paying into your own local union, which is 318; is this correct? A. Yes, sir, that's true.

Q. You were not paying any union dues as such to Local 562, were you? A. No, I paid no union dues.

[610] Q. The only thing you paid while working under 562's jurisdiction is what you had agreed to pay on this voluntary card; is that correct? A. $2.00 per day; yes.

Q. All right. Now, you indicated that you have worked in other locals throughout the country and on a travel card where in you paid $8.00 a month; is this correct? A. That's right.

Q. Now, on those occasions when you were working in Denver and some other places you mentioned, and you paid the $8.00 a day?

The Court: $8.00 a month.

Mr. Daly: I am sorry. $8.00 a month travel card to that local where you were working. Did you also pay your union dues back to 318 at the time? A. Yes, sir.

Q. You are now a member of Local Union 798; is that correct? A. That is true.

Q. And you indicated to Mr. Riddle that you still live in Cape Girardeau? A. Yes.

Q. Local 798's headquarters are in Tulsa, Oklahoma, is that correct? [611] A. Yes.

Q. How many of the members that you actually know live in Tulsa? A. Well, I don't know of any that live in Tulsa; no, sir.

Q. What is the jurisdiction of Pipefitters Local 798? Do you know? A. They cover several states; all but maybe four or five states.

Q. Of the fifty states, they cover all but four or five? A. Yes.

Q. And men who are members of 798 work all over the country; is that right? A. That's true.

Q. Does your Local 798 now have a voluntary political fund? A. They have a one and a half per cent assessment when you are working in their jurisdiction.

Q. I am talking—You are a 798 member; is this correct? A. Yes.

Q. And you pay your 798 dues; is this right? A. This is true.

Q. I am asking you whether 798, in fact, doesn't in fact have a voluntary political fund that is collected much [612] the same as 562's is collected? A. No, they have never collected anything from me.

Q. I am not asking—You haven't paid anything; is this correct? A. No, I haven't paid anything.

Q. Do you know whether or not they have a fund or not? A. As far as I know, they don't have a fund.

Mr. Daly: I have no further questions.

Mr. Randall: I have a few questions.

Cross-Examination.

By Mr. Randall:

Q. Mr. Baker, when you first went to work for 798, did you work on a travel card? A. No.

Q. You applied and got admission to membership immediately? A. No. It took about a month.

Q. Well, you were on a travel card? A. I wasn't on travel card.

Q. They didn't collect the travel card? A. No.

Q. The $8.00 per month? A. No.

Q. Sir, are you aware of the fact that under the [613] Constitution and By-Laws of the National Association, that if a local accepts payment for a travel card, that after a period of time they must accept you as a member of the local? A. I have heard that said.

Q. You know that, don't you, sir? A. (Indicating yes.)

Q. And that some of the locals refuse to accept the payment for the travel card in order to avoid flooding their local with members when they have these out-of-towners work? You are aware of that, aren't you? A. I have heard it said; yes.

Q. Sir, as I understand it, on at least one of the jobs that you worked under Local 562, you did not contribute to the Voluntary Fund? A. The pipe line job, they accept no adoby for that job.

Q. Well, you did not contribute; you didn't make any payments? A. I don't recall that I did.

Q. Did you work under 562 after that job? A. No.

Q. That was your last job with 562? A. Yes.

Q. Did anybody—Did you try to get a job after that? [614] A. I've asked the business agent of 318 if they had any work, and he'd always say they didn't have any.

Q. I see. In other words, you did try to work for 562 at subsequent times? A. Well, I tried to work at 318.

Q. Tried to work for 318. Have you ever tried to work for 562? A. I don't recall that I ever have since I went to 798.

Q. Since you went with the Pipe Line people? A. That's right.

Q. And you say the reason you went with the Pipe Line people is because with your training and experience you can make more money with them? A. Well, I was working out of town all the time, so I figure I might as well just join the Pipe Line local.

Q. And you could make more money with them? A. That's true.

Q. And you have the security of the fact that you are a member of that local too now? A. Yes.

Q. Did you ever talk to Mr. Callanan, or Mr. Lawler, or Mr. Seaton? A. I've talked to Mr. Lawler a couple times.

Q. Did you ever talk to them about the political [615] voluntary contributions? A. No, I never have.

Q. Neither of those three people ever told you you had to contribute in order to have employment with Local 562 jurisdiction, did they, sir? A. No.

Q. Did any other officer of Local 562 ever tell you that? A. No, they never told me that.

Q. In fact, no one associated—a steward didn't tell you that either, did he? Did they? A. No.

Q. No one ever associated with this union ever told you you had to make those contributions, did they? A. No.

Q. This was just something that you just more or less assumed in your mind because the other people were doing so? A. Well, it was from other people that worked and paid, they told me that you had to pay this thing. It was just an understanding that if you worked in the jurisdiction, you paid it.

Q. I said, in other words, this is just something that you sort of gathered from rumors, and things of that nature? A. You could call it that.

[616] Q. Did you ever inquire as to whether some of the other people were not making the contributions? A. You mean did I ever inquire of anybody——

Q. See if some of the people were not so contributing and still working? A. No.

Q. You didn't make any general inquiry about the matter, either with the local or with the membership? A. No.

Q. And you say you never did attend any of the meetings of the local? A. Not of 562.

Q. 562. Did you ever attend any meetings of the Fund itself? A. No.

Q. You didn't do that. Were you ever down at the Electricians' hall down here in St. Louis? A. No, I can't say I was.

Q. Were you ever down at the Pipefitters hall here in St. Louis? A. Yes, I have been down there.

Q. And you went there for the purpose of being referred out for work. Is that the reason you were there? A. Yes.

[617] Q. Did you ever go for any other purpose? A. I don't remember that I ever did.

Q. You never went there to make any inquiry about the Voluntary Fund? A. No.

Mr. Randall: That's all, Your Honor.

The Court: Any other questions of this witness?

Mr. Nangle: I have no questions.

The Court: Any redirect?

Mr. Riddle: Yes, Your Honor.

Redirect Examination.

By Mr. Riddle:

Q. You testified in answer to one of the questions propounded to you that you did not read these cards before you signed them? A. No, sir, I didn't.

Q. Will you tell the Court and jury why you didn't read them? A. Well, they always approached you with a card and said, "Sign this card to authorize to give the $2.00 a day." And so I just went ahead and signed it.

Q. Sir, you were asked about revoking the card. Did you ever revoke this card at any time while you were working for them? [618] A. No, sir.

Q. Why didn't you? A. Well, I wanted to keep on working, so I didn't revoke it.

Mr. Riddle: I have nothing further of this witness. Just a minute.

The Court: Any other cross?

Mr. Daly: I haven't.

Mr. London: No.

Mr. Randall: None, Your Honor.

The Court: You may step down.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. Riddle: If it please the Court, Mr. Daly asked this witness, the last one that appeared, Mr. Baker, if someone had ever talked to him and if he had signed a statement, and he said he had not signed a statement.

I did interview this man. As far as I know, I am the only member of the United States Attorney's office that did. I scribbled some notes and dates on a piece of paper, which I have. I didn't consider those statements as such. They were just my notes. If the counsel for the defendants would like to take a look at them, I will be glad to show them to them.

[619] Mr. Randall: We would like to see them, yes. We would have to have the witness available.

The Court: He's there.

(Mr. Riddle handed paper to defense counsel.)

Mr. Randall: Your Honor, we have no further questions.

The Court: Let the record show that Mr. Riddle's notes were made available, and defense counsel, after reading them, said they had no further interrogation of the witness. All right. You may be excused, Mr. Baker.

(Witness excused.)

JOHN PATRICK O'LAUGHLIN,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, will you state your full name for the Court and jury, please? A. John Patrick O'Laughlin.

Mr. London: May I have a spelling of that?

The Court: O'Laughlin.

Mr. London: I am sorry.

Q. (By Mr. Riddle) And your address, sir? A. 2960 Wellington Drive, Florissant, Missouri.

[620] Q. How old are you, sir? A. I'll be fifty-five in October. I'm fifty-four now.

Q. Are you a pipefitter? A. Yes, sir.

Q. A member of Local 562? A. Yes, sir.

Q. How long have you been a member? A. It will be thirty years the 15th of this month.

Q. Thirty years? A. Right.

Q. Have you been a dues paying member for that period of time? A. Yes, sir.

Q. Now, as of now, who are you working for? A. Natkin Company.

Q. Natkin. A. N-a-t-k-i-n & Company.

Q. What project are you working on? A. Well, they have three jobs in the City and three outside. It is my job to ride around and look in on all of them.

Q. Sir, are you what they call a traveling superintendent, or riding superintendent? A. Riding boss, they usually term it; yes, sir.

[621] Q. And you have, at this time, three different jobs under your over-all supervision?

The Court: Six, isn't it?

The Witness: I would say five.

Q. (By Mr. Riddle) Five? A. Yes, sir.

Q. How long have you been what you refer to as a riding superintendent? A. I'd say about seventeen months.

Q. What were you before that? A. Well, general foreman, area foreman; foreman; pipefitter.

Q. Now, how long were you foreman? A. This is a little hard to describe. I'd say about five to ten years.

Q. That is, before you became a riding superintendent? A. Yes, sir.

Q. Five to ten years? A. Somewhere in that neighborhood.

Q. And before that, you were just a journeyman pipefitter? A. Well, when you get these foreman jobs, you aren't a foreman all the time. As the manpower requires a foreman, then they elevate a man to foreman.

Q. Sir, who selects you to be a riding superintendent? [622] A. Who selects me?

Q. Yes. How do you get that appointment? A. Well, I was sent out from the hall as a riding foreman.

Q. Will you tell the Court that the hall of 562 designates you as the riding superintendent? A. Yes, sir.

Q. And who in the hall makes that designation? A. Well, in this particular case, Mr. Callanan sent me out.

Q. Mr. Lawrence Callanan? A. That's correct.

Q. Was your transition from a foreman to a riding superintendent, was that a promotion? A. I would say so.

Q. All right. Now, are you telling the Court and jury that Mr. Callanan made this promotion, or gave you the increase? A. I would assume so.

Q. Now, while you were a foreman, who designated you, or appointed you to that position? A. Well, sometimes the general foreman on the job; sometimes you are sent out as a foreman from the hall.

Q. All right. Well, were you appointed foreman or [623] named foreman in much the same way you were named riding superintendent? That is, by the hall, or some person at the hall? A. Usually, yes.

Q. And if you were demoted from riding superintendent, or from foreman, you would go back to being a regular pipefitter? A. Yes, sir.

Q. Is there a difference in your work rate or your wages? A. Yes, sir.

Q. How much difference is there between what you would get per hour as a riding superintendent and what a regular pipefitter, journeyman pipefitter would get an hour? A. I'd say two dollars ninety-seven and a half cents.

Q. Per hour? A. Well, let me think a minute.

Q. All right, sir. A. I'd say two dollars thirty-seven and a half.

Q. All right. Now, how much of an increase in pay was there when you were promoted from foreman to riding superintendent, per hour? A. Well, I was a general foreman before I got the foreman, so a dollar an hour more.

Q. A dollar an hour more for riding foreman over regular foreman? [624] A. Right.

Q. Sir, during the period of time that you were foreman, were you also a steward for the Union? A. On various jobs. Not all of them.

Q. How are you appointed a steward? A. This also comes from the hall.

Q. From some person or officer at the hall? A. Usually.

Q. Now, sir, as a steward do you get any additional compensation? A. No, sir.

Q. This is a non-paying job? A. Right.

Q. What are the privileges, or emoluments, or responsibilities of a steward on a job? A. There are no privileges that I know of. You just stand up for your working conditions.

Q. All right. You are the hall spokesman on that particular job? A. More or less; yes.

Q. And you communicate to the hall messages and complaints from the members? A. Yes, sir. Any jurisdiction, or things like that.

Q. Does this also include complaints or communications [625] from the hall? A. Yes, sir.

Q. Now, sir, beginning—Let me rephrase that question a little bit. Do you recall the job out at McDonnell Aircraft in 19 and 63? A. Vaguely.

Q. And what was your position or title at that time? A. General foreman, if I recall.

Q. And who was the contractor on that job? A. General Installation.

Q. General Installation? A. Yes, sir.

Q. How long were you out there on that particular project, if you recall? A. I'd have to guess on that. I think about four, five months; somewhere in that neighborhood.

Q. Sir, this would be in 1963? A. That was the time we had the strike. In other words, we were out there and we were off the job during the strike, and then I went back out there.

Q. All right, sir. Now, with reference to this strike, do you recall that after the strike the union dues and assessments were checked off by the company? A. Yes, I believe so.

[626] Q. Before this strike, how were the dues and assessments checked from the members? A. The dues and assessments you paid yourself.

Q. All right. How did the members pay them? Did they pay them to you? A. No, sir, not dues.

Q. Not dues? A. No.

Q. All right, sir. Now, during the thirty years that you have been working as a pipefitter, you have—let me present the question to you this way: Have you become familiar with dues? What that word means? A. I think I have.

Q. Have you become familiar with the word "assessments," and what that word means? A. I think so.

Q. Sir, tell the Court and jury what an assessment means to you. A. Assessment means that they take out three and a quarter per cent of my pay.

Q. Is this an assessment that you are talking about? Does that, in your interpretation, is it a tax, or dues, or right to belong to the union? A. No, sir.

[627] Q. Well, is it necessary for you to pay the assessments in order to belong to the union in good standing? A. Well, I have to say yes.

Q. Dues, the same thing? A. Right.

Q. You have heard the word "assessments"? A. Yes.

Q. And dues, used for thirty years? A. Yes.

Q. Have you heard them used by members on the job, and by officers down at the hall? A. Yes, sir.

Q. You have a thorough understanding of what an assessment is? A. I think so.

Q. Sir, during the time that you were collecting money from members on your job out at McDonnell, after the strike and after the checkoff began, do you remember that period of time? A. I think so.

Q. You weren't, beginning, I'd say in the early fall of 1963, collecting money from members working on your crew? A. Yes, sir.

Q. How often did you make those contributions? [628] A. Usually every week.

Q. Usually every Monday? A. As a rule, it was on a Monday.

Q. How did you make them? Can you just outline the procedure for the jury and the Court, please? A. Well, usually at the start of the work day they'd line up at my bench, and they'd pay their—Voluntary Fund is what it is. It wasn't an assessment or dues.

Q. Did you start to say assessment, sir? A. I started to, but I caught myself, because it isn't an assessment.

Q. Why did you catch yourself? A. Well, normally I call it that instead of the Voluntary Fund.

Q. Normally you call it an assessment? A. Right.

Q. Full well knowing what an assessment means? A. Well, it is just a misnomer, you might say.

Q. Yes, sir. Well, now, sir, during the period of time that you were making these collections, you say misnomered assessment, did you file a report with the hall showing the amount that you collected and the people from whom you made the collection? A. I think I usually filled out a slip; yes, sir.

[629] Q. And on the right-hand column of the slip, did you put down the amount that you had collected? A. Yes, sir.

Q. Now, sir, did you put down the amount of hours that the men had worked? A. I don't think so.

Q. All right, sir. A. Normally I didn't. That was strictly a forty-hour week anyway.

Q. Yes, sir. Now, what you were collecting on sheets that had a heading, "Pipefitters Voluntary Fund" do you remember those sheets, and familiar with the format of them? A. Yes, sir.

Q. Sir, let me ask you this question: Did you at the time you were collecting them, in your own mind and in your experience, thirty years as a pipefitter, consider those payments assessments? A. No, sir.

Q. Sir? A. No, sir.

Q. Did you ever write on the report, "assessments"? A. To the best of my knowledge, I didn't.

Q. If you wrote on the report, "assessments," would that help refresh your recollection as to how you considered [630] them at that time? A. I don't think so.

(Thereupon Government's Exhibits 114 and 115 were marked by the reporter for the purpose of identification.)

Q. Sir, I will show you what has been marked Government's Exhibits 114 and 115, and ask you to examine them and see if you can identify them? A. Which way do you mean, "identify" them, sir?

Q. Well, did you prepare those sheets? A. Did I prepare these? This doesn't look like my writing; no, sir.

Q. Sir? A. This doesn't look like my writing.

Q. Will you look at it real carefully and see whether it is your writing? A. I would say it is not. This one here, I—this one here, I don't believe is.

Q. Sir? A. I don't believe so.

Q. Sir, let me show you a list of sheets, which I will not have marked at this time, and ask you to examine them and see if that will help refresh your recollection as to whether they were all prepared by you and in your handwriting? Can you tell me, looking at them, if they are in your handwriting? [631] A. It doesn't look to me like they are, sir; no.

Q. Can you tell the Court and jury that you did not prepare those sheets? A. From the appearance of them, I did not.

Q. I would like you to look at them carefully. A. Some of these that are printed, I would say would be mine.

Q. Sir? A. Some of these that were printed, I would say were probably mine.

Q. Are they all printed? A. No, sir.

Q. Well, can you go through here and select the ones that are in your own handwriting? A. Are we talking about handwriting or printing?

Q. Just any of them that appear in that folder.

The Court: All that he wants is if you can go through that group and select any that you made out; is that right, Mr. Riddle?

Mr. Riddle: Yes, Your Honor. Thank you.

(The witness looks at papers in folder.)

A. Well, I would think that some of these are mine back in here. The printing. None of the writing belongs to me. Some of these might, but I have my doubts about some of [632] these, sir.

(The witness handed group of papers to Mr. Riddle.)

Q. (By Mr. Riddle) You handed me a number of them that you have identified as your own? A. I think they are mine. I think so.

Mr. Riddle: I will ask the reporter to mark these Govment's exhibits.

(Thereupon Government's Exhibits Nos. 116, 117, 118, 119, 120 and 121 were marked by the reporter for the purpose of identification.)

Q. Sir, I will hand you what's been marked Government's Exhibits 116 through 121, and ask you if those are the sheets from the folder I handed you that you have identified as being in your writing? A. This one definitely is not.

Q. You have handed me what's been marked Government's Exhibit 117, and it is your testimony that is not in your writing? A. I would say it is not.

Q. No part of it? Beside the name of foreman it shows John O'Laughlin. Is that not your signature? A. No, sir, that is not my signature.

Q. All right, sir. A. These ones that are printed, I would go along with [633] some of these being mine.

Q. Now, I show you what's been marked Government's Exhibit 114, and ask you to examine that carefully and

see if that is in your handwriting? A. It looks like it might be mine.

Q. Sir? A. It looks like it might be mine.

Q. Now, can you look at it carefully and tell the Court and jury if that is in your handwriting? A. I'll say that it is.

Q. All right, sir. Now, look under the, beside the name R. Dolan. It is the third name appearing on it? A. Yes, sir.

Q. Tell the Court and jury if R. Dolan is written in your handwriting, and if the other words to the right of it, are figures, are in your handwriting? A. They look like they are; yes, sir.

Q. What is beside R. Dolan? What did you write down beside R. Dolan? A. It says back, b-a-c-k, and a-s-s-t.

Q. What does a-s-s-t. mean? A. Chances are it may have meant assessment.

Q. And you wrote that in your own handwriting? A. It seems like I did; yes, sir.

[634] Q. How much of the back assessment was he paying you on that occasion? A. Well, this would have to be broken down as to how many hours he owed before he came on the job. I really don't know how to figure it.

Q. Yes, sir. How many hours he owed before he came on the job. How did you figure how much he owed? A. I didn't figure it. He figured it.

Q. How much of a back assessment then, according to those figures, was he paying you? A. Well, let's see. He had seventy-six hours, according to this.

Q. Seventy-six hours back assessment? A. No, sir. I am figuring this in my own mind. Just a minute.

Q. Pardon me. Go ahead. A. Well, it looks like it would be close to two weeks, roughly.

Q. Now, sir, at the time you wrote that, you knew as much about what the difference between an assessment and a voluntary contribution is, as you know now, didn't you? A. Yes, sir.

Q. At that time, did you conclude that his back payment owing was an assessment when you wrote it down? [635] A. No, sir.

Q. But you wrote it down as a back assessment? A. Usually—I call it that a lot of times.

Q. And almost everybody on the job calls it an assessment? A. More or less, yes.

Mr. London: I object to the form of the question; leading.

The Court: He's already answered.

Mr. London: May we see those, Mr. Riddle?

(Mr. Riddle handed paper to Mr. London.)

Mr. Nangle: May we see the rest of them?

Mr. Riddle: Just a second.

The Court: Have you concluded your direct, Mr. Riddle?

Mr. Riddle? No, I haven't, Your Honor. I want to make an offer into evidence, and they wanted to see it.

The Court: All right.

Q. (By Mr. Riddle) Now, sir, in preparing these reports for the hall—I guess you did prepare them for the hall, did you not? A. Yes, sir.

Q. Did you normally make notations on them when one of your crew members were delinquent or in arrears? [636] A. Only as a means of explaining where the extra hours was coming from.

Q. Yes, sir. And, in fact, you put "back assessment" more than once in your reports, didn't you? A. It is possible.

Q. And you put it on there to explain why the payment was greater than the hours worked that week? A. Greater than the fellows on the job; right.

Q. I see. I'll show you what's been marked Government's Exhibit 115, and ask you to look beside the man's name J. Neilson, and ask you if you made the notation on there, "back assessment"? A. Well, this doesn't look like my writing.

Q. Well, now, you were preparing the reports, were you not, that were going into the hall? A. On this particular job?

Q. Yes. A. Not all the time; no, sir.

Q. All right. Was someone preparing them at your direction, or under you? A. No, sir. I had a steward on the job.

Q. You had a steward on the job at this time? A. Yes, sir.

Q. Are you suggesting to the Court that he may have [637] prepared some of these? A. I would suggest that; yes, sir.

Q. Would anybody, besides you or the steward, be preparing any of these forms? A. No, sir.

Q. Either you or him? A. The steward or myself.

Q. You are telling the Court and jury you are not sure whether you prepared that one or not? A. I am not positive. This "back assessment" thing here doesn't look like my writing. The printing, however, does, but it doesn't look like my writing there.

Q. All right, sir. But your testimony would be that either you or your steward put the "back assessment" on there? A. That's correct.

Q. Yes, sir. Did your steward that you had on the job at that time refer to these as assessments and back assessments?

Mr. Daly: I will object to this.

The Court: Be sustained as to what the steward did.

Q. Now, sir, will you tell the Court and jury why you are reluctant to refer to these collections as assessments? A. I'm not reluctant to refer to them as assessments. They are an assessment of the Voluntary Fund collection.

Q. Sir, have you been told to refer to these as [638] voluntary contributions rather than assessments? A. No, sir.

Q. Never? A. No, sir. He uses the word "assessment" because it is easier than saying Voluntary Fund. The biggest part of the time that is what they are referred to, assessments.

Q. The Voluntary Fund is usually referred to as an assessment? A. I myself refer to it that way; yes, sir.

Q. Now, it has all the characteristics of your other assessments, does it not? A. No, sir.

Mr. London: I object to the form of the question, Your Honor.

The Court: No. He may answer.

The Witness: I said, "No, sir."

Q. (By Mr. Riddle) All right. Well, is this assessment, that is, the Voluntary assessment, is that based upon the number of hours worked? A. Yes, sir.

Q. Is your assessment based upon the number of hours worked? A. Yes, sir.

Q. Is the assessment based—well, is the assessment [639] paid weekly into the hall? A. The assessments?

Q. The Voluntary assessment? A. The Voluntary assessment, as a rule; yes, sir.

Q. And is the other assessment? A. That is checkoff.

Q. It is paid into the hall also each week? A. Well, I don't know how the boss handles that. They take it off on the check.

Q. All right. They are based upon a formula, both of them are, and they are both paid weekly, and they both go in the hall? A. Right.

Q. Is there anything that distinguishes one from the other? A. Well, the one you don't handle at all. One is on the checkoff. They take that right out of your check.

Q. Is there any other distinguishing characteristic between the Voluntary assessment and the other assessment? A. I would think not.

Q. All right, sir. If it please the Court, the Government at this time offers into evidence its Exhibits Nos. 114 and 115, and asks they be received.

The Court: All right. 114 and 115 will be received.

[640] Mr. London: May we approach the bench?

The Court: Yes.

(Thereupon, the following colloquy ensued among the Court and counsel at the bench, out of the hearing of the jury:)

Mr. London: I thought that he said there was some of the writing on 115 that was not his. I may be mistaken.

The Court: He said, "I made out 115."

Mr. London: But that the writing there does not look like his writing.

The Court: No, that isn't it. Where is the one that has the assessment on it?

Mr. Riddle: They both do.

Mr. London: He said this was not his writing.

The Court: Oh, I think on this one he said he didn't put that on there.

Mr. Riddle: But he said the steward did who was working on the job with him, and one of the two put it on, and that is sufficient for their admission into evidence.

Mr. Daly: He didn't say the steward put it on. He said the steward sometimes made the collection.

Mr. Riddle: I am sure the Court recalls the specific answer, he or the steward put it on. He wasn't sure whether he did or—but one of them did.

The Court: He said one of them did.

[641] Mr. London: We want to object, because there is an improper foundation laid for Exhibit 115.

The Court: Be overruled.

(Thereupon, Government's Exhibits Nos. 114 and 115 were received in evidence.)

(Thereupon, the trial was resumed before the jury as follows:)

Mr. Riddle: Government has no further questions of this witness.

The Court: All right. Who is going to conduct the cross-examination?

Mr. Randall: Your Honor, may I request any grand jury testimony or statements?

Mr. Riddle: There are none, Your Honor. I never saw this witness before this morning.

The Court: All right.

Cross-Examination.

By Mr. Randall:

Q. May I have those two exhibits, please?

Mr. O'Laughlin—— A. Yes, sir.

Q. Have you always contributed to the Voluntary Fund? A. Yes, sir.

Q. Are you still contributing? [642] A. Yes, sir.

Q. Are your contributions voluntary? A. Yes, sir.

Q. Has anyone associated with the Union, or anyone else, ever told you that the payments into the Voluntary Fund were conditioned to your remaining a member of the Union and working? A. No, sir.

Q. Have you ever told anyone that? A. No, sir.

Q. Have you attended the meetings of the Voluntary Fund that were held at the Electricians' hall on Sundays? Have you attended any of those meetings? A. Very seldom I miss a meeting, sir, but I don't recall the one you are referring to.

Mr. Riddle: What was the one you were referring to, Mr. Randall?

Mr. Randall: There were a number of them held on Sunday.

The Witness: Very seldom I miss them.

Q. (By Mr. Randall) Where you had refreshments, and things of that nature? A. Yes, sir.

Q. And candidates appeared? A. Yes, sir.

[643] Q. Do you know some of the candidates who appeared at those meetings? A. Yes, sir.

Q. And could you tell us who some of them were? A. Well, I think Mr. Eagleton, for one.

Q. Mr. Thomas Eagleton? A. Yes, sir.

Q. The Lieutenant Governor? A. Yes, sir. Oh, there has been a number of them, sir.

Q. Was Governor Warren Hearnes ever there when you were there? A. Not at that—I was not at that meeting, sir. Not at that meeting, sir.

Q. You were not at that meeting? A. I am trying—No. I am trying to think who was there when Eagleton was there. I don't recall, sir.

Q. You can't recall any others. Now, sir, at those meetings, was there any discussion of the candidates that were being supported by the Fund? A. Was there any discussion as to them?

Q. Concerning them? A. No, sir. They were just introduced.

Q. Just introduced. What is your political party? A. I'm a Democrat.

[644] Q. Now, you say you are at the moment a riding superintendent? A. Yes, sir.

Q. What is your wage rate as a riding superintendent? A. Seven dollars and ninety-seven and a half.

Q. Per hour? A. Right.

Q. And that does not include the money that goes into the Welfare Fund? A. No, sir.

Q. Now, on these two exhibits, Nos. 14 and 16—pardon me—114 and 115, Your Honor—I am sorry. Well, I will start with 114. Let me hand this to you, sir, and there is one man there where the word a-s-s-t. is written. Am I correct on that? A. You're correct.

Q. And it shows he worked how many hours? A. Seventy-six.

Q. And it shows how much he paid? A. Yes, sir.

Q. Which was how much? A. Nine dollars and seventy-five cents.

Q. And in that particular case, that was in excess of the amount that was normally contributed for that amount of [645] hours; isn't that correct; The amount paid was in excess of what was normally contributed for the number of hours shown? A. Yes, sir.

Q. And in order to explain that, somebody, either you or someone else, wrote in the word back a-s-s-t. A. This is correct.

Q. Now, did that man come to you and tell you that he owed this—— A. Yes, sir.

Q. ——back assessment on a prior job? A. Yes, sir.

Q. In accordance with the contribution card that he then had in effect? A. Yes, sir. Could I offer an explanation of that? Maybe it would clarify this a little bit.

Q. Yes, sir. A. When you are on these jobs, and these fellows come from these other jobs to your job, sometimes the assessments aren't collected on that job, and then they hit your job, and that is when they give that to you. Normally that would run this amount up.

Q. In other words, the Voluntary contributions are not collected at all on some jobs, are they? A. No, sir.

[646] Q. And the people, in order to make their contributions, must go to the hall to do so? A. Yes, sir.

Q. And in this particular case, rather than go into the hall to make their contributions, they gave it to you when they arrived? A. Just carried it over; yes, sir.

Q. And in order that somebody at the hall might understand what had occurred, you put in the words "back assessments"? A. Yes, sir.

Q. And you were aware, of course, that under this Voluntary Card Agreement that they had pledged themselves to make a certain contribution until the card was revoked? A. Yes, sir.

Q. Which they were entitled to do at any moment? A. Yes, sir.

Q. And on this Exhibit 115, which I now hand to you, you have a similar situation of a contribution there of $13.00 by one man, don't you? A. Yes, sir.

Q. And someone has written in the words there also "back assessment"? A. Yes, sir.

[647] Q. Now, Mr. Riddle asked you if there was a characteristic difference between the voluntary contributions and your dues and assessments which are required by your Constitution and By-Laws? A. Yes, sir.

Q. Now, the characteristic difference is that one is voluntary and the other is mandatory; isn't that correct? A. This is correct.

Q. Now, some of these exhibits—I am looking at 117—I notice there are some people working from Local 501. Where is Local 501 located, sir? A. I really don't know.

Q. And on 116 I notice almost half of the people are from Local 553. Do you know where Local 553 is located? A. No, sir.

Q. All you know is these men were sent out from Local 562 to work for you? A. This is correct.

Mr. Randall: That's all I have, Your Honor.

Mr. Daly: I have no questions.

Mr. London: No questions.

Mr. Nangle: No questions.

The Court: Any redirect?

Mr. Riddle: Yes, just a couple.

[648] **Redirect Examination.**

By Mr. Riddle.

Q. Sir, are you familiar with the phrase "Fund meeting"? A. Fund meeting?

Q. Yes. A. No, sir.

Q. Is the first time that you ever heard that phrase when Mr. Randall just asked you about it here on cross-examination? A. Well, if you want to phrase it that way, "Fund meeting," yes, sir.

Q. When he asked you if you ever attended a Fund meeting, I believe your answer was no, you never heard of such a thing? A. Right.

Q. You heard of union meetings? A. Yes, sir.

Q. Attended many of them? A. Yes, sir. I very seldom miss.

Q. Sir, at these union meetings, the ones that you have attended, were you ever present when a report of the Fund money was given? A. Not that I recall.

Q. Do you know of anyone who was ever a director or an officer of the "Fund"? A. Do I know of any officer of the Fund?

[649] Q. Yes. A. Well, I know who is the head of the Fund, if that is what you are referring to.

Q. Who are the people who are the head of the Fund? A. Mr. Callanan.

Q. Anybody else? A. Well, offhand I can't come up with any names right now; no, sir.

Q. Sir, you were asked if the people had a right to revoke their "Voluntary Cards"? A. Yes, sir.

Q. And in all the years and all the riding around that you have done as superintendent, have you ever—has anyone ever told you that he had revoked his card? A. No, sir.

Q. And how many people would you estimate that you have collected money from for this "Voluntary Fund"? A. You mean over the span of thirty years?

Q. Well, over the span of however long it's been in operation? A. I'd sure have to take a guess on that, and I don't know if I could.

Q. Ten thousand? A. Oh, no.

[650] Q. A thousand? A. Well, let's use a thousand as a round figure, but I doubt if it would be that much.

Q. You never heard of anyone revoking it? A. No, sir.

Q. Now, I believe you said that you prepared these reports and showed the back collections, back assessments and current payments so that people at the hall would know; is this what you said? A. This is what I said.

Q. What people at the hall did you want to know? A. Whoever handles this.

Q. Mr. Callanan? A. Well, I don't—Brother Callanan handled it all the way, things like this—I don't know.

Q. You just don't know what happened to these forms after you turned in your money? A. They go to the hall, turn it over to the proper authorities.

Q. Who do you turned it over to? A. Whoever is at the hall when I go in there.

Q. Could be Mr. Callanan? A. Could be. Normally I never see him.

Q. Have you ever turned sheets and money over to him? [651] A. No, sir.

Q. What about Mr. Lawler? A. No, sir.

Q. What about Mr. Seaton? A. I don't believe Seaton either; no, sir.

Q. What about Beans Burke? A. Beans, I may have.

Q. What about Mr. Steska? A. Steska, I may have.

Q. He is president of the local union? A. Yes, sir.

Q. And Beans Burke, he is what, secretary-treasurer? A. Treasurer; right.

Q. Sir, I believe you testified that you could find out how much a man was "voluntarily" contributing, by looking at his card? A. I don't recall saying that, sir.

Q. How did you know how much he was contributing? A. How do you mean that, how did I know how much he had contributed? If he worked forty hours, he paid two dollars and a half.

Q. Well, did you know that that is the amount that he wanted to volunteer, rather than five dollars? A. Well, I wouldn't stop him if he wanted to come up [652] with five. The normal 50 cents is for eight hours.

Q. What if he came up with just one? A. If that is all he'd come up with, that is what I'd take.

Q. And you'd make a notation of that? A. Not necessarily.

Q. But you'd show the amount he paid? A. Oh, I'd show the amount he paid; yes, sir.

Q. What about the out-of-towners? How much are you collecting from them today? A. Today? Two dollars for eight hours.

Q. Two dollars for eight hours? A. Yes, sir.

Q. And how much for the regular 562 members are you collecting today? A. Fifty cents for eight hours.

Q. Fifty cents for eight hours? A. Yes.

Q. So the out-of-towners are "voluntarily" paying $2.00 per hour, while the regulars are paying 50 cents per hour? A. Yes, sir.

Q. Now, this R. Dolan, do you remember the man's name who shows his back assessment? A. Yes, sir.

[653] Q. What did you say? I have forgotten your testimony about this card that he signed. What benefit would this card be to you in determining what his payment would be? A. I don't quite follow you, sir.

Q. Well, this Voluntary Contribution Card, do you remember that agreement that Mr. Randall asked you about? A. Yes.

Q. Would that be of any benefit to you in determining how much you would pay? A. No, sir.

Q. It wouldn't help you at all? A. No, sir. He volunteered this himself.

Q. If he had a blank amount on it you wouldn't need to know that? A. No, sir.

Q. Sir, at the present time, do you ride down to the Pilot Knob job? A. The Pilot Knob job is completed as far as our contract is concerned.

Q. Is there another contract still going on there? A. This, I don't know.

Q. Sir, one other question. Do apprentices pay any dues or assessments? A. No, sir.

[654] Q. Do they pay any assessments to the Voluntary Fund? A. Well, this I really can't tell you. I don't know.

Q. I see. Do you have a son? A. Yes, sir.

Q. What is his name? A. Well, I have four of them, sir.

Q. Did you have a son who was working on the job out at McDonnell? A. No, sir. Oh, I am sorry. Yes, I did. I'm sorry.

Q. Was he an apprentice? A. No, sir.

Q. He wasn't an apprentice? A. No, sir.

Mr. Riddle: Excuse me just a second, Your Honor.

(Thereupon Government's Exhibit No. 122 was marked by the reporter for the purpose of identification.)

Q. (By Mr. Riddle) Sir, I don't want to be repetitious, but I do want to be sure that I understand your testimony correctly, that an apprentice does not pay either assessments or dues to Local 562? A. No. I'd like to correct this, sir, because I am talking about the Voluntary Fund that they do not pay, on my jobs, anyway. What you are referring to as assessments, that is a checkoff, and I don't check their check.

[655] Q. You say that apprentices do not pay into the Voluntary Fund? A. To the best of my knowledge, they do not.

Q. Why do they not? A. Well, this I do not know.

Q. Have you been told not to collect from them? A. Not in particular, no.

Q. I don't mean generally, but have you been told not to collect from apprentices? A. It is my understanding that I don't collect from them.

Q. How did you get that understanding? A. They are only kids. They only make about $2.00 an hour.

Q. And they can't, or aren't given the privilege of voluntarily contributing? A. Well, I don't think with wages like that they'd want to contribute anyway, would they? I don't say that they can't if they want to.

Q. But you don't expect them to? A. No, sir. They aren't even asked to contribute, to the best of my knowledge.

Q. Now, who is Tom McLaughlin? A. McLaughlin?

Q. Yes. McLaughlin. [656] A. He is one of the boys that was on that job.

Q. Is he an apprentice? A. Is he an apprentice?

Q. Yes. A. No, sir. He is a journeyman. Maybe at that time he was an apprentice. He is a journeyman now.

Q. Did you make a notation of his name, and beside it put "apprentice" in your report? A. I may have, sir.

Q. I will show you what's been marked Government's Exhibit 122, and ask you if the word "apprentice" shows up beside the name McLaughlin? A. P-r-e-n; right.

Q. What does that stand for? P-r-e-n.? Apprentice? A. Evidently it stands for apprentice.

Q. All right, sir. That's on your job, and that's a sheet under your name as foreman? A. Under my name as foreman, sir; yes, sir.

Q. Sir, at a time before the checkoff, that is, before the end of the strike in '63, you collected the regular dues and assessments from your crew members at that time, didn't you? A. I don't remember collecting any dues and assessments.

Q. At no time? A. Well, now I don't remember, sir; no, sir.

[657] Mr. Riddle: All right. The Government has nothing further to ask this witness.

Mr. Randall: May I see that last exhibit.

Mr. Riddle: Except we do want to offer into evidence Government's Exhibit 122, and ask that it be received.

The Court: All right. It will be received.

(Whereupon Government's Exhibit No. 122 was received in evidence.)

Recross-Examination.

By Mr. Randall:

Q. Mr. McLaughlin, ordinarily the foreman does not collect dues and assessments, does he? A. Dues and assessments? No, sir.

Q. That is done by the steward; isn't that correct, sir? A. No, sir.

Q. I mean it was done before checkoff by the steward? A. Yes, sir.

Q. And, of course, since you got checkoff, the companies, in effect, collect it for the Union? A. Right.

Q. And ordinarily the foreman also does not collect the Voluntary Fund either, does he? A. In some cases when he is acting as steward he might collect.

[658] Q. Only when he holds the additional function of acting steward? A. Yes, sir.

Q. So as a foreman, you are not Union official, are you? As a foreman? A. No, sir.

Q. As a steward, of course, you are a Union official? A. Yes, sir.

Q. Now, on this last exhibit Mr. Riddle gave you, No. 122, is that in your handwriting? A. It looks like it, sir.

Q. Is that "p-r-e-n" in your handwriting? A. I have a doubt there, sir.

Q. You don't think that is? A. I don't think so.

Q. So you really don't know what that means, do you? A. Might I ask the gentleman a question there? Are you referring to Mr. McLaughlin as my son, sir?

Mr. Riddle: No.

The Witness: OK.

Q. (By Mr. Randall) Is he your son? A. No, sir. That is what I wanted to get straightened away. He mentioned a son before, and then he hit me with that.

Q. I see. Do you recall this McLaughlin that is listed [659] on here with the word "pren"? Do you know him? A. Yes, sir.

Q. Is he presently a member of Local 562? A. Yes, sir.

Q. And he's now a journeyman? A. Yes, sir.

Q. Now, Mr. McLaughlin——

The Court: This is O'Laughlin.

Mr. Randall: O'Laughlin. I am sorry. Mr. O'Laughlin, how long has the Fund, the Voluntary Fund, the Voluntary Political Fund been in existence, to your best recollection? A. Oh, offhand I'd say about five years. I'm guessing, however.

Q. Well, in other words, you don't recall? A. The start of it?

Q. Yes. A. No, sir.

Q. Well, isn't it a fact that it's been in existence since about 1949; something like that? A. You got me.

Q. Well, you have always contributed to it? A. Yes, sir, always.

Q. Now, are you familiar with Mr.—are you familiar with the term "political meetings" that you have had down there? [660] A. Yes, sir.

Q. And did you receive notices of those political meetings through the mail? A. Yes, sir, I did.

Q. And these political meetings were ordinarily associated with candidates and with refreshments, and things of that nature? A. Yes, sir.

Q. And they usually occurred on Sundays, didn't they, sir? A. Yes, sir.

Mr. Randall: That's all.

Mr. London: Briefly, Your Honor.

Recross-Examination.

By Mr. London:

Q. Mr. O'Laughlin, you signed a Voluntary Contribution Agreement card, didn't you, sir? A. Yes, sir.

Mr. London: (To the reporter) Would you mark that, please?

(Thereupon Defendant Union Local 562's Exhibit A was marked by the reporter for the purpose of identification.)

Q. Mr. O'Laughlin, I am going to hand you what's been marked for identification purposes as Local 562's Exhibit A [661] and ask you, sir, if that is the card containing your signature? A. That is it.

Q. And that is a Voluntary Contribution Card that you signed? A. Yes, sir.

Q. Very briefly, Mr. O'Laughlin, Mr. Riddle was asking you from all the jobs that you have worked on, if anyone ever revoked their Voluntary Contribution Agreement, and you indicated that you knew of none? A. Right.

Q. Out of all the men that you have collected from on this Voluntary Fund, have you ever told any of them that they had to give? A. No, sir.

Q. Has any man ever been denied work because he didn't give, to your knowledge? A. To the best of my knowledge, no, sir.

Q. As a matter of fact, as Mr. Riddle has talked to you about dues and assessments and voluntary fund, under the Constitution and By-Laws of your Union, if you don't pay your dues and assessments you can be suspended; isn't that correct, sir? A. That's correct.

Q. If you don't pay your Voluntary Fund, can you be [662] suspended? A. No, sir.

Q. You still work, don't you? A. Right.

Q. Mr. London: That is all.

Redirect Examination.

By Mr. Riddle:

Q. Do you know anybody working on your job now that's not current on his political contribution? A. This apprentice—I have an apprentice there; yes, sir.

Q. That's the only one? A. As of this time, yes, sir.

Q. They are all about as current on that as they are on their regular dues and assessments, aren't they? A. Yes, sir.

Mr. Riddle: Thank you. I have nothing further.

The Court: Anybody else have any questions?

Mr. Daly: No, Your Honor.

The Court: All right. You may be excused.

(Witness excused.)

The Court: Members of the Jury, we will have our afternoon recess. Bear in mind the admonition I have given you heretofore.

(Following a brief recess, the further following [663] proceedings were had before the jury:)

The Court: Call your next witness.

Mr. Riddle: Mr. Stiffler.

JAMES M. STIFFLER,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. What is your full name, please? A. James M. Stiffler.

Q. And your address? A. 10516 Druid Drive. That is Bellefontaine Neighbors.

Q. How old are you, sir? A. Forty-four.

Q. And are you presently employed? A. Yes, sir.

Q. For whom? A. Babcock & Wilcox Company, Portage de Sioux powerhouse.

Q. And where is this Portage de Sioux powerhouse located? A. West Alton, Missouri.

Q. West Alton, Missouri? A. Right.

Q. In what part of Missouri is that? A. Well, if you go out 94, it is on Highway 94.

[664] Q. How far from St. Louis? A. Oh, about twenty miles.

Q. What position do you have there? Are you a journeyman, or foreman, or superintendent? A. Foreman.

Q. Sir, how long have you been a foreman? A. About the last six years.

Q. Prior to that, were you a journeyman? A. I was a journeyman.

Q. Pipefitter? A. Right; journeyman pipefitter.

Q. How long have you been a member of Local 562? A. Twenty-one years.

Q. Prior to the present project or location, where did you work? A. I worked for Natkin & Company.

Q. On more than one project, or just one? A. No, I was on, oh, five, six, maybe eight different jobs.

Q. As foreman? A. No, not all the time.

Q. Sometimes as foreman? A. The last two years I was with them I was a foreman.

Q. All right. What projects or job did you work on [665] for them? A. St. John's Hospital. The last one was St. Louis University.

Q. Sir, how did you get your appointment, or your designation as a foreman? A. Well, the riding boss more or less comes up and said, "Jim, do you want to run this job?" I said, "Yeah."

Q. Who is your riding boss? A. Harold Burns.

Q. All right. Is he a higher man in the hierarchy of the Union organization than you? The riding boss? A. Well, yeah. He is more or less your foreman, area foreman, or the riding boss, superintendent, or general foreman.

Q. He is a member of Local 562 also? A. Right.

Q. Do you know how he gets his appointment? A. Through the union hall.

Q. Yes. From the manager, or the people in charge down at the union hall? A. Right.

Q. Mr. Stiffler, at the present time, on the job that you are working on, do you make collections in cash from various members of your crew? A. Yes, I do.

[666] Q. How often do you make them? A. Once a week.

Q. On what day? A. This is prior to—I was with Dougherty & Company out there, and I got transferred over to Babcock & Wilcox.

Q. All right. Well, let's talk about Babcock & Wilcox. A. At the present time, no. We have a steward on the job that picks up the Voluntary Fund.

Q. The steward picks up the money now? A. Yes, sir.

Q. But at one time you did pick up the money? A. At one time when I had a gang, I was a foreman, I'd go in the building and pick the money up.

Q. Sir, when you pick the money up, on whatever job it is, and under whatever circumstances, do you fill out a form or report showing the amount you collected, and from whom each amount was collected. A. Well, I would go in the building in the morning.

Q. No. Just—— A. On a Monday.

Q. Well, maybe you didn't understand my question, but when you do pick up the money, do you make out a report showing who paid, and how much? A. Yes. I don't make it out. I just write it down on [667] a piece of scratch paper and take it up to the steward.

Q. All right. Does the steward then make it out? A. Yes, sir.

Q. Do you tell him what you put on the report? A. Well, I just hand him this piece of paper.

Q. What is on the piece of paper that you hand him? A. The names of the men in my gang.

Q. And the amount they pay? A. Right.

Q. And the hours they worked? A. Right.

Q. Now then, what does he do with that information, if you know? A. I imagine he puts it down on another form.

Q. Mr. Stiffler, in 19 and 63, were you working for the Natkin Company? A. Yes, sir.

Q. Did you have a position with them at that time? A. Yes, sir.

Q. And directing your attention to the St. Louis University job or project, do you remember that one? A. Yes, sir.

Q. Were you a foreman at that time, and on that job? A. I run the job; yes, sir.

[668] Q. Did you make the collections at that time? A. Yes, sir.

Q. Did you fill out the forms and sheets yourself? A. I fill out the forms; yes, sir.

Q. And put the amount of the collections and who paid? A. Right.

Q. You did this every Monday? A. Every Monday.

Q. About how long did that job last? A. I'd say a year and a half to two years.

Q. Sir, in the twenty-one years that you have been a member of Local 562, have you become acquainted with the term "union dues"? A. Yes, sir.

Q. "Union assessments"? A. Yes, sir.

Q. What do you understand the difference between a union dues and a union assessment to be? A. Well, your union dues, you pay your union dues, and you get a statement put in your book. You pay that once a month. The assessments more or less goes into our welfare.

Q. All right. And how are the assessments paid? Weekly? A. On a checkoff now. We get the checkoff.

[669] Q. But they are paid weekly and taken out of the—— A. Taken out of our checks.

Q. Out of the payroll, or total payroll each week? A. Right.

Q. And are the assessments constant, or are they based upon a percentage of the gross income? A. I believe they are on a gross income.

Q. They are a percentage—it is an assessment of three or so percent of the gross wages for the week involved? A. Right.

Q. You are familiar with those terms? A. Yes, sir.

Q. Assessments and union dues? A. (Indicating yes.)

Q. Now, do you understand that assessments and union dues are the responsibility and the obligation of each member of the Union? A. Yes, sir.

Q. And if they aren't paid, that the membership will be suspended or revoked? A. No, I don't know that.

Q. You don't know what would happen if you failed to pay your dues and assessments? A. If you didn't pay your dues, then you would be [670] suspended by the——

Q. Local? A. No, not by the Local.

Q. The United—— A. The United Association; right.

Q. Yes, sir. Now, the amount of money that you, or the money that you collect from the people on your crew, do you consider them assessments? A. No.

Q. Do you know what an assessment is? A. Yes, sir.

Q. And you don't consider those payments as assessments? A. No, sir.

Q. Have you ever referred to them as an assessment? A. Oh, probably years ago. It just was a term used years ago.

Q. Well, how many years ago? A. I'd say fifteen, maybe.

Q. Well, was the term assessment being used during the year that the St. Louis University job was being constructed? A. No. It was the Voluntary Fund then.

Q. Strictly voluntary? A. Right.

Q. Never referred to as an assessment? [671] A. No.

Q. And, certainly not by you? A. Not by me, no.

Q. Sir, on these forms that you filled out, did you write your name on the top beside the word "foreman"? A. My name would be on the top of the list; yes, sir.

Q. And up at the top of the form beside the word "foreman," your name would appear? A. Right.

Q. And you usually signed your name J. Stiffler? A. Right.

Q. Sir, I'll hand you a folder which I will now, at this time, mark as an exhibit, and ask you to examine it, if you will, and see if these are true copies of the forms prepared by you on the St. Louis University job in 1963. Just thumb through them, if you can identify your handwriting, and tell us whether or not they were prepared by you? A. Yes, sir, these are my——

Q. Go ahead and thumb through them, and see if they are yours. A. I would say most of them are. Here is one that I don't recognize.

Q. You are pulling out one that you say is not yours? A. Well, no. There's a couple more.

[672] Q. Well, is it fair to say that most of them are yours? A. I would say most of them are mine; yes, sir, in my handwriting.

Q. All right, sir.

(Thereupon Government's Exhibits Nos. 123, 124, 125, 126 and 127 were marked by the reporter for the purpose of identification.)

Q. Sir, I will show you what's been marked Government's Exhibits 123 through 127, and ask you to examine them and see if those are in your handwriting? A. This one is mine. This one is mine. This one is mine. I don't know—this one here don't look like mine.

Q. You are looking at Exhibit 126? A. Wait a minute. This might be mine. This could be mine. That's mine, and that's mine.

Q. All right sir. Now, the one that was marked 127, is that the one you said was yours? A. Yeah, that's mine.

Q. All right, sir. Sir, I call your attention to the name that appears on there, R. Hatchman, and ask you if you wrote that name on there? A. Yes, sir.

Q. And his name appears on there in two different places, does it not? [673] A. Yes, sir.

Q. And I ask you to look beside the R. Hatchman that appears last, and see if there are some words that are beside it on a line? A. It says, "Back——"

Q. What does it say? A. "Back assessments," it looks like.

Q. Back assessments. Is that in your handwriting? A. Yes, sir.

Q. Did you put it on there? A. Absolutely.

Q. What did you mean by putting "back assessment" on this one? A. Well, what I meant is I probably—he might have been on a vacation or something, and when he come on the job, why he paid his Fund then.

Q. He paid his assessment? A. Well, it was Voluntary Fund. Like I said, I used the word "assessment," which I was using the wrong word.

Q. Well, now you knew at that time, back in '63, the difference between an assessment and a voluntary payment, just as well as you do today, didn't you? A. Well, yes, I did.

Q. But you, at that time, used the word "back assessment"? [674] A. Right.

Q. Now, is there any particular reason why you used "assessment" to show his delinquency or back payment? A. No, there was no reason that I could remember now.

Q. Well, sir, isn't it true that you made out other reports showing back assessments when people paid up for delinquencies? A. If I did, I don't remember.

Q. Well, sir, you used assessments in connection with this Voluntary Fund, did you not, on the job? And other people used it? A. It has been used for years before; yes, sir.

Q. These voluntary payments were called assessments? A. No. It was a word that we used years ago. It was just a word that we used, that's all, years ago.

Q. Well, let me ask you this, sir. Was it a word you were using to describe these "voluntary payments" in 1963? A. Well, that might have been in a category that we got into by using the word assessment, but it was a voluntary fund.

Q. Well, sir, how does this Voluntary Fund assessment——

Mr. London: Object to the use of the word, Your Honor, putting words in the witness's mouth that he has not used, and ask the jury to disregard that.

Mr. Riddle: I withdraw that.

[675] The Court: He's withdrawn it.

Q. (By Mr. Riddle) How does this word "back assessment" as you have used it on your report and in your own handwriting, differ from the regular assessment to the Union? Can you tell the Court and jury that? A. I don't understand that question.

Q. Well, I understand from you that you understand thoroughly what assessment means? A. Yes, sir.

Q. I understand from you that you put the word assessment on this sheet here? A. I did; right.

Q. On a Pipefitters Voluntary Fund form? A. Right.

Q. Now, sir, how did the assessment that you referred to here on this form—— A. How did it get on that form?

Q. Yes. A. Probably the man was on a vacation, and when he come back he never paid his Voluntary Fund, so I just put it on the next sheet.

Q. All right, sir. Well, my question is what is the difference between the type of back assessment that you are talking about on your form here and the type of assessment [676] that you pay regularly into the Union? A. What is the difference?

Q. Checkoff or otherwise? Yes, what is the difference? A. No difference that I know of.

Mr. Riddle: Yes, sir. That's all from this witness, Your Honor.

The Court: All right. You may cross-examine.

Mr. Riddle: We'd like to offer into evidence at this time, Your Honor, Government's Exhibit No. 127.

The Court: What about 123 through 127?

Mr. Riddle: Just 127.

Mr. Randall: Your Honor, I would like to request to see it before it is——

The Court: OK.

(Exhibit was handed to Mr. Randall.)

(Thereupon Defendant Union Local 562's Exhibit B was marked by the reporter for the purpose of identification.)

The Court: It will be received. I think that pink thing though has to come off.

Mr. Riddle: Your Honor, our own notes on these will be taken off before it is exhibited to the jury.

(Whereupon Government's Exhibit No. 127 was received in evidence.)

The Court: Go ahead.

[677] **Cross-Examination.**

By Mr. London:

Q. Mr. Stiffler, Mr. Riddle has been asking you with regard to the use of the word assessment, Voluntary Fund, and so on. Regardless of what you call the contributions to the Voluntary Political Fund, etc., was that money that had to be given in order to work, or was it a voluntary contribution? A. It was a voluntary contribution.

Q. If a man did not contribute to the Voluntary Fund, was he suspended or refused work? A. Not to my knowledge; no.

Q. Did you, sir, sign a Voluntary Contribution Agreement? A. Yes, sir.

Q. Let me hand you that which has been marked for identification purposes Union Local 562's Exhibit B, and ask you, sir, if that is the card that you signed? A. That's the card.

Q. And does that card bear your signature? A. Yes, sir.

Q. When you use the word, as Mr. Riddle has been doing, of "assessment," or "owed," or whatever words it may be, let me ask you, sir, do some members of your Union contribute to the United Fund? A. Absolutely.

[678] Q. Do they sign a card when they contribute to the United Fund? A. They sign a little form that comes out on the job.

Q. And after they sign this form contributing to the United Fund, they consider that they owe that money, don't they, sir? A. Yes.

Mr. Riddle: I will object to that as calling for a conclusion.

The Court: Be sustained. The answer will be stricken. The jury will disregard it.

Q. When contributions are made to the United Fund, in some places of employment that money is taken right out of the paycheck each month, isn't it, sir? A. That's right.

Q. In accordance with the agreement? A. Right.

Mr. Randall: I have a few questions.

Cross-Examination.

By Mr. Randall:

Q. Mr. Stiffler, did you ever tell any man that he must contribute to the Voluntary Fund in order to continue his employment? A. No, sir.

[679] Q. Or his membership in the Union? A. No, sir.

Q. Did Mr. Callanan, Mr. Lawler, or Mr. Seaton, ever tell you anything like that? A. Never.

Q. Have you been contributing to the Voluntary Fund? A. Yes.

Q. From its beginning? A. From the beginning.

Q. And are you still contributing? A. Yes, sir.

Q. And are your contributions voluntary? A. Absolutely.

Q. Did you attend any of the political meetings that were held at the Electrical Hall on Sundays? A. Yes, I did.

Q. Were any candidates present at those meetings? A. Yes, there were some candidates present.

Q. Do you recall who any of them were? A. Right offhand, no, I don't.

Q. You don't. What is your politics, sir? A. Democrat.

Q. Did you sign a Voluntary Card? A. Yes, I did.

[680] Q. Did you read it? A. Not word for word; no.

Q. Did you ever present those cards to any of the people for signature? A. On the job?

Q. Yes. A. Yes.

Q. Did you tell them at that time that it was voluntary? A. Absolutely.

Mr. Randall: That's all the questions.

Mr. Nangle: I have one question.

Cross-Examination.

By Mr. Nangle:

Q. Mr. Stiffler, do you recall how long you contributed to the Voluntary Fund? A. Since its been in existence, I imagine.

Q. Do you have any idea how long that's been? A. No, I don't.

Q. You have no idea at all how long its been? Has it been—Could I ask you, sir, do you recall if its been longer than ten years? A. I don't remember if its been ten years. I think it has been.

Mr. Nangle: I have no other questions.

[681] Mr. Riddle: Just a couple.

Redirect Examination.

By Mr. Riddle:

Q. Mr. Stiffler, I believe you said that you made your payments into this Voluntary Fund voluntarily? A. Yes, sir.

Q. Each week? A. Yes, sir.

Q. Have you voluntarily contributed the same amount each week? A. Well, it depends on the time you put in, the amount of hours.

Q. Yes. Now, sir, you have paid your assessments regularly each week also, haven't you? A. Yes, sir.

Q. And you pay them voluntarily too, don't you? A. Pay everything, yeah.

Q. Voluntarily? A. (Indicating yes.)

Q. By voluntary, what do you mean by that? A. Well, I give. I think that this is what I should do.

Q. Yes, sir. Now, sir, do you pay property tax here in St. Louis? A. Yes, sir. No; in the County.

[682] Q. Do you pay that voluntarily? A. Absolutely.

Q. Do you pay your income tax? A. I hope so.

Q. Voluntarily? A. Yes, sir.

Q. Now, sir, you were asked about this United Fund. That runs for about what? One payday or one week? A. No. I think you can spread it out, an hour. We got each check.

Q. Over what period of time? A. Oh. If you want to donate a day's pay, you take an hour a week, I believe, out for eight weeks.

Q. This is once a year? A. Once a year.

Q. Yes, sir. It is not fifty-two weeks out of the year, is it? A. No.

Q. It is only a short limited period of time? A. Well, whatever you want to contribute to the United Fund.

Q. Sir, do people who contribute in this United Fund, the ones that you know about, do they pay exactly the same amount? [683] A. I don't know that. I don't know what they pay. They can pay whatever they want. I mean they can contribute, if they want to contribute, a week's pay, whatever they want to contribute. That is up to them.

Q. Do you know whether or not various people on your force pay differing amounts? A. I don't know this, but I imagine they did.

Q. Some of them may pay ten dollars, and some may pay one dollar? A. As far as I know. I don't know that.

Q. Sir, do you know anybody on your crew who contributed "voluntarily" a different amount from anybody else into this Voluntary Fund? A. A different amount?

Q. Yes. Don't they all pay the same rate? A. Yeah; un huh, yes, sir.

Q. Yes, sir. Sir, you said that some people pay into this United Fund maybe a whole week's pay. Do you, in the entire period of time that you have been collecting on this fund, do you know of a single member who has paid more than the going rate into the "voluntary" fund? A. More than the going rate?

Q. Yes. Well, what is the going rate now? Fifty cents, isn't it? [684] A. Right.

Q. Do you know of anybody now that pays one penny more than 50 cents a day? A. The out-of-town men.

Q. Yes, sir. Do you know of any member of 562 who pays one penny in addition to 50 cents a day? A. Not to my knowledge; no.

Q. Now, you say the out-of-town men pay more than 50 cents a day? A. Right.

Q. And they paid $2.00 a day? A. I believe that's right; yes, sir.

Q. Or $10.00 a week? A. Yes, sir.

Q. Do you know of a single out-of-towner who pays one penny more or less than—— A. Not to my knowledge.

Q. They all pay precisely $2.00 a day? A. If they work forty hours a week; right.

Q. And if they all work ten hours, they all pay precisely the same amount? A. Right.

Mr. Riddle: The Government has nothing else to ask this witness.

[685] **Cross-Examination.**

By Mr. Randall:

Q. Sir, your dues and assessments are checked off by your employer, aren't they? A. That's right, sir.

Q. You have no choice at all with respect to that? A. That's right.

Q. And in addition to that, before they were checked off, your Constitution provides that you will be expelled if you don't pay your dues and assessments? A. That's right.

Q. And so in that sense, if you are to remain a member of the Union, they are mandatory, aren't they? A. Absolutely.

Mr. Randall: That's all.

The Court: You may be excused. Call your next witness.

(Witness excused.)

EUGENE MARSHALL,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Your full name is Eugene Marshall? A. Eugene John Marshall; yes, sir.

[686] Q. You are a member of Local 562? A. Yes, sir.

Q. What is your present address? A. 8908 Marcella, in Bel Ridge.

Q. In what? A. 8908 Marcella, in Bel Ridge.

Q. Bel Ridge? A. Yes, sir.

Q. What job are you working on at the present time? A. I am working on the Barnes Hospital Complex job for Thomas J. Sheehan & Company.

Q. Thomas J. what? A. Thomas J. Sheehan. S-h-e-e-h-a-n.

Q. That is the construction company that has the contract for that project? A. Yes, sir.

Q. Are you a foreman? A. I'm a general foreman; yes, sir.

Q. What is the difference betwen a foreman and a general foreman? A. Well, it's a—the general foreman carries more responsibilities toward the job.

Q. And does the general foreman get paid a higher rate? A. Yes, sir.

[687] Q. Who selected you as the general foreman, sir? A. My company.

Q. Your what? A. The company that I work for. The Thomas J. Sheehan Company.

Q. Did they select you, or the union hall sent you out as that? A. Well, with the agreement of our union hall. I mean we, both of them agreed that I was capable of being a general foreman. I suppose that's how it happened.

Q. Well, is it fair to say that your union endorsed you? A. I would say so.

Q. All right. Who in your union endorsed you for the general foreman job? A. I don't know exactly. I mean exactly who would be the one that would endorse me.

Q. You don't know? A. The local union as a whole I would say. Local 562 endorsed me.

Q. You mean by resolution? A. I don't know anything about—What do you mean by resolution, sir?

Q. Were you endorsed as a general foreman at a meeting of the members? [688] A. No, sir.

Q. Well, is it fair to say that you were endorsed or recommended as a general foreman by the managing officers of your local union? A. I would say endorsed.

Q. Would that be Mr. Steska? A. Well, partially, I would say.

Q. Mr. Callanan? A. Yes, sir. All the officers of our Local, I think, approved me as a general foreman. At least, I assume this.

Q. All right, sir. Well, sir, could you be a general foreman without your local union's approval or designation? A. Well, I think the procedure is that the people you work for, like in this instance the Thomas J. Sheehan, would feel that you were capable of doing the job, and I think that they would normally discuss it with our local union, and they would agree mutually that this was all right, as far as capabilities to handle the job, because I know that is what our local union is interested in, somebody that can do this work properly for a company.

Q. Well, sir, without belaboring this point, I would like you to tell the Court and jury if Mr. Callanan, Mr. Steska, Mr. Lawler, Mr. Seaton and those other people, if you could be a general foreman on this job without their approval? Tell the [689] Court and jury your understanding of that. A. I would say yes.

Q. You could be? This is what I think. I mean this is my feeling.

Q. All right, sir. Now, sir, how long have you been a general foreman? A. Oh, about eight years.

Q. Were you just a normal foreman before that? A. Yes, sir.

Q. How long were you just a regular normal foreman? A. Prior to my being a general foreman?

Q. Yes. A. A couple years.

Q. Sir, at the present time, do your collect any money from any of your people, any of the workers on your

crew? A. Yes. I have been picking up the Voluntary Fund.

Q. Yes; sir. How often do you pick up that money? A. Usually every week.

Q. Every Monday? A. No particular day.

Q. Just any day in the week? A. Yes, sir.

Q. Do you decide when you want to pick it up? A. We always considered it a matter of convenience that [690] sometime during the week anybody that would be, that would want to contribute to the Voluntary Fund, that I would be there to accept this money and see that it got to the Vountary Fund office.

Q. Well, now, for example, today is Monday. Who will be collecting it in your place today? A. Well, right at this time I only have one more man, you know, and he's holding down. We are in between. There is no need for a lot of men over there right at the moment.

Q. Sir, how long have you been a member of 562? A. Well, about twenty-five years.

Q. During that period of time, I guess you have become familiar with the word "assessment"? A. Well, I've heard the word; yes, sir.

Q. Have you ever used the word yourself? A. Not in reference to this Voluntary Fund, but I've used it when there was such a thing as that.

Q. Sir, I want to ask you specifically, you answered that question for me, do I understand your testimony here to be that you never used it in connection with this Voluntary Fund? A. I have never used it in connection with the Voluntary Fund that I know of, sir.

Q. Would there be any occasion for you to ever use it in connection with the Voluntary Fund? [691] A. There should not be any occasion to use it in connection with the Voluntary Fund.

Q. Why is that? A. Because it is separate and distinct from any assessment, the way I see it.

Q. Yes, sir. Sir, 19 and 64, were you working on the Barnes Hospital project? A. Yes, sir.

Q. For the T. J. Sheehan Company? A. Yes, sir.

Q. And did you fill out the forms for the Pipefitters Voluntary Fund during that period of time? A. You mean the card?

Q. 1964. I am not talking about the card. I am talking about the sheets where you show the—— A. Oh. Yes, sir.

Q. I show you one here, without having it marked as an exhibit, and ask you if this is the sort of a form that you filled out? A. Yes, sir.

Q. And over on the left-hand side you put the member's name? A. Yes, sir.

Q. And then you would show the number of hours that he [692] worked on each day? A. Yes, sir.

Q. Then you would show the total number of hours worked for the week? A. Yes, sir.

Q. Then you showed the amount that he paid? A. Yes, sir.

Q. Then you would total that up and turn the money in? A. Yes, sir.

Q. Now, do you think, in your mind, that this was going to the "Voluntary Political Fund", was it? A. No doubt in my mind.

(Thereupon, Government's Exhibit No. 128 was marked by the reporter for the purpose of identification.)

Q. Sir, I will show you what's been marked as Government's Exhibit 128, and ask you to examine it and tell the Court and jury if you prepared that form, and if it is in your handwriting? A. I don't think this is in my handwriting.

Q. Well, sir, look at it real carefully and tell the Court and jury whether it is or isn't, if you can identify your own handwriting? A. Well, this is printing, sir, but I would think this is in this man's handwriting right here. That is, I had a [693] steward on the job when I had a lot of men.

Q. I see. What is the steward's name? A. George Pantazi.

Q. George Pantazi. All right. And you were the foreman? A. Yes, sir.

Q. Your name is up on top as the foreman? A. Yes, sir.

Q. Was this sheet prepared under your direction? A. Under my direction? The direction that I gave that George and I agreed on was that he would make it up and would carry, see that the money got to the Voluntary Fund.

Q. All right. Mr. Pantazi would help you then during this period of time? A. He did during this period of time; yes, sir.

Q. Would you tell him how much each man worked? A. Yes. He had access to my time books.

Q. So the information that he got either came from you or your records? A. Yes, sir.

Q. All right, sir. Now, on this particular exhibit that we are talking about, calling your attention the column in the right-hand side, I notice that the first eleven names show that each of the eleven people worked forty hours that week; [694] is that correct? A. Yes, sir, that seems to be——

Q. And that each of the eleven people paid $5.00? A. Yes, sir.

Q. Now then, underneath that I notice that there is a name, or the name——

Mr. London: May we examine this exhibit? We haven't seen it yet.

The Court: Show it to him.

Mr. Riddle: All right.

(Mr. Riddle handed exhibit to defense counsel.)

Q. (By Mr. Riddle) Beside the name W. Van Dusen——
A. Yes, sir.

Q. ——can you interpret what appears after his name, for the Court and jury, please?

Mr. Randall: Your Honor, I am going to object to this. This man did not make this exhibit. The steward on the job made it, and it's not been offered into evidence.

The Court: Well, was this record made under your direction?

A. Well, not specifically under my direction. I gave access—it was mutually agreed between me and this man, my steward, that he would be able to check my records, and he would be able to go and collect whatever contributions the men [695] had, and see to it that they got to the proper source, which was the Voluntary Fund.

The Court: Is that form there, that's a copy of a regular form that is supplied to you by the Voluntary Fund?

The Witness: Yes, sir, it looks like it.

The Court: I mean the Pipefitters Voluntary Fund. The objection will be overruled. He may answer.

Mr. Riddle: If it please the Court, at this time we'd like to offer it into evidence.

The Court: All right. It will be received.

(Whereupon, Government's Exhibit No. 128 was received in evidence.)

Q. (By Mr. Riddle) Go ahead and interpret what is beside Mr.——

Mr. Daly: Your Honor, I am objecting to him interpreting.

The Court: I will sustain it as to his interpreting it.

Q. (By Mr. Riddle) Well, explain for the Court and jury what appears beside Mr. Van Dusen's name. A. Well, from Mr. Van Dusen's, this is a date here, and then over here, instead of—well, the only difference—I don't know what this—this is January 26, and then there's 2-2, which I don't understand. And then over here, the [696] only difference between the others is that he has $10.00 paid, where the others have five. That's the only difference I see.

Q. All right, sir. Now, this 1-26 and 2-2, could that be January 26 to February 2nd? A. Yes, I guess it would be.

Mr. Randall: Your Honor, I am going to object to that. It is speculative.

Mr. Riddle: It is his own record. Your Honor.

The Court: Well, it is not his own record. He said he didn't make it. Let me see that thing.

(The witness handed exhibit to the Court.)

The Court: What is the report for?

The Witness: This report here?

The Court: Yes. What week?

The Witness: Up at the top?

The Court: Yes.

The Witness: It says February 2, 1964.

The Court: And from January 22 to February 22, how many days would you work?

The Witness: From January 22 to February 22?

The Court: February 2nd.

The Witness: Or February 2nd. Let's see. About seven days.

The Court: Of course, it would all depend on Saturdays [697] and Sundays?

The Witness: Yes, sir.

The Court: OK. Go ahead, Mr. Riddle.

Q. (By Mr. Riddle) Sir, it shows a payment in excess of the $5.00? A. Yes, sir.

Q. That the others had paid; is that correct? A. Yes, sir.

Q. All right, sir. Now, beside the name McWhorter—— A. Yes, sir.

Q. What appears there? First off, how much does it show that he paid? A. It shows he paid $28.00.

Q. All right, sir. Does your record that you have exhibited by the Exhibit 128 that is in your hand, does it show for what period of time that payment is? A. Well, it is not in my hand, to begin with.

Q. All right. A. What was the question again, sir?

Q. Can you tell us what the $28.00 is for? For what period of time? A. Well, if these are months, this would be December 29, '63. It is hard for me to interpret something that someone else has put on there. These are obviously months and dates is [698] all I can say, sir.

Q. Sir, does this indicate payments for back periods?

Mr. London: Your Honor, I am going to object to the form of the question. The witness has said, "It is not in his handwriting," and he can't interpret it.

The Court: All right. I will sustain the objection. I think you can go about it a different way, Mr. Riddle.

Q. (By Mr. Riddle) Sir, can you tell by looking at Government's Exhibit 128, and tell what period of time the twenty-eight-dollar payment for Mr. McWhorter covers? A. I'm still unable to interpret it. I can't.

Q. I am not asking you to interpret it, sir. Do you know Mr. McWhorter? A. Yes, sir, I do.

Q. Was he an out-of-towner, or 562? A. To my knowledge, sir, he was a Local 562 member.

The Court: Do you know what the rate was then? For Voluntary Fund?

The Witness: Not exactly. That was—we are talking about 1964?

The Court: What is the date on there?

The Witness: February 2, 1964.

The Court: All right. Do you know what the rate was [699] then for 562 members?

The Witness: Well, the way it looks here, I mean it—of course I have to interpret this again, but I guess it was a dollar a day at that time.

The Court: Go ahead, Mr. Riddle.

Mr. Riddle: All right.

Q. (By Mr. Riddle) Sir, let me ask you this question. Can you tell, by looking at this exhibit, if member J. McWhorter, on February 2, 1964, caught up for back payments into the Fund? A. I would have to assume that he did, but I still can't interpret all these numbers here. I would assume the intention of the man that made this thing out was to take all of the voluntary monies that Mr. McWhorter had agreed to volunteer, and to add them all up and keep up to date with his list, as he did on these others that were more simple up here at the top.

Q. Mr. Marshall, do you know Mr. John O'Laughlin? A. Yes, sir.

Q. Have you talked to Mr. John O'Laughlin within the last hour? A. No, sir. He came back to the table up there, but there was absolutely no discussion of anything, absolutely.

Q. Did he make any statements at all to you? A. None whatsoever. I was sitting right across the [700] table from him when he came in, and we were just sitting there smoking, all of us, general discussion, and Mr. O'Laughlin said absolutely nothing to no one, to my knowledge, and specifically nothing to me.

Q. Sir, let me show you this folder, and ask you to go through it, take your time, and see if any of those sheets in there were prepared by you in your own handwriting. Let me have the exhibit back.

(The witness handed exhibit to Mr. Riddle.)

A. No, sir, none of them.

Q. Your testimony is that none of them were. Does your name appear as foreman on this job on each sheet? A. As far as I can see, yes, sir.

Q. All right, sir. Now, sir, on this job, or on any job, was any member exempted from paying into this "Voluntary Fund", or any person exempt that worked on the job? A. Not to my knowledge.

Q. What about an apprentice? A. I think an apprentice was exempted. I am not sure.

Q. Sir? A. I don't think apprentices pay to the Voluntary Fund.

Q. You mean an apprentice didn't voluntarily pay? A. No. It was just not—He could volunteer, I would assume. I really don't know. I can't answer that for [701] sure.

Q. How did you find out that an apprentice was exempt from voluntarily paying?

Mr. Randall: I will object to the form of the question, Your Honor. The witness didn't say that.

The Witness: I don't know this, really.

(Thereupon, Government's Exhibit No. 129 was marked by the reporter for the purpose of identification.)

Q. I show you what's been marked Government's Exhibit No. 129, and ask you to examine it and see if that is in your handwriting? A. This is in my handwriting.

Q. Sir? A. This is in my handwriting.

Q. Is there anybody that appears on that sheet, out of seventeen people, who was exempted by you from paying on that date for the pay period covered ending on February 3, 1963? A. Yes, sir, there is a man at the bottom here that I have got marked "apprentice" and then I just have a dash over there where it says paid.

Q. What did you mean by putting the dash on it? That he didn't pay? A. No, I didn't mean that he didn't pay. Now, whether I was right in doing this or not, I don't know, but I think I [702] assumed that an apprentice didn't contribute to the Voluntary Fund.

Q. How did you make that assumption? From what information did you have available did you make that assumption? A. Just of my own thoughts. I mean I don't know that anybody ever told me that.

Q. Sir, from your own thoughts, did you know that an apprentice was exempt from paying his regular assessments and dues? A. His regular assessments and dues, an apprentice has to pay.

Q. He what? A. His regular mandatory assessments and dues to our U. A. and to our Local Union, an apprentice has to pay.

Q. He has to pay that? A. I would assume so.

Q. I want you to tell the Court and jury whether or not anybody told you to exempt and not collect from any apprentice that was on your job? A. Nobody ever told

me that. I mean nobody ever just came to me and said, "Now, the apprentices don't contribute."

Q. All right. Why did you put on this sheet, the Voluntary Contribution sheet, that this man is an apprentice? A. Well, in my own mind I thought there was a difference [703] between the two. I mean I wanted to indicate that he was an apprentice.

Q. You wanted to indicate to whom? A. To our Voluntary Fund where the——

Q. You wanted to indicate to the people up at the union hall that he was an apprentice?

Mr. Daly: I will object to that. He didn't say that he wanted to indicate to the Voluntary Fund.

The Court: Well, he will explain it. All right. Go ahead.

Q. (By Mr. Riddle) Sir, have there been other apprentices during the years that you have been collecting, that you haven't collected from? A. Not to my knowledge.

Q. Is this the only one? A. (Indicating yes.)

Q. Sir? A. Well, to my knowledge; to the best of my recollection, there may have been another one. I am not real sure.

Q. If you had an apprentice on your job today, would you exempt him? A. Yes.

Q. Why? A. Well, I mean I've never been told this specifically, [704] but I just assumed that the apprentices didn't contribute. Maybe I am wrong, but this was my assumption, and nobody has ever told me any different.

Q. This apprentice's name was Dennis Kilfoy? A. Yes, sir.

Q. How long did he work on your job? A. Oh, he was there for—Denny was there for a couple years, I suppose.

Q. Did he ever pay a single penny into this fund? A. You mean when he was an apprentice?

Q. Yes. A. Not that I know of. Like I say, I didn't collect it at that time that we are talking about.

Q. Is he a journeyman now, and a full member? A. Yes, sir.

Q. Is he paying now? A. Well, this I don't know. It would depend upon whether or not he decided to volunteer to the Fund.

Q. Is he working on your job, or has he worked on your job in the last few weeks? A. No, sir.

Q. Last few months? A. No, sir.

Q. Where is he working? [705] A. To the best of my knowledge, he is down at the brewery now.

Q. You dont know if he began paying into the Fund as soon as he got his journeyman's permit? A. I think he did pay into the Voluntary Fund. I'm not sure, but——

Q. Just—— A. As he got to be a journeyman, I think he, like the rest of us, or like a lot of us, decided that he wanted to contribute to the Voluntary Fund, and I think that Dennis did also. Now, this is not for sure.

Q. Now, throughout the period of time that you have been collecting for as foreman, has any person other than an apprentice failed to pay into these collections into the Fund, to your knowledge? A. To my knowledge, no.

Q. That's the only person, or the only category of people? Apprentices? A. Well, it is not the only category of people, but I mean that's the only one that, as you say, failed to pay into the Voluntary Fund, to my knowledge, in the people that I was concerned with.

Mr. Riddle: The Government would like to offer into evidence Government's Exhibit 129, and ask it be received.

[706] The Court: All right. It will be received.

(Whereupon Government's Exhibit No. 129 was received in evidence.)

Mr. Randall: We have no objection, Your Honor.

(Thereupon Government's Exhibit No. 130 was marked by the reporter for the purpose of identification.)

Q. Sir, I will show you what's been marked Government's Exhibit No. 130, and ask you to examine that and see if it was prepared by you, and in your handwriting? A. This is my handwriting; yes, sir.

Q. Top of the extreme right-hand column, in that column I take it shows collections, there appears to be something written that says $1.00 per eight hours. Is that in your handwriting? A. Yes, sir.

Q. What was your purpose for inserting that on this exhibit?

Mr. London: Your Honor, again, may we see the exhibit before the witness testifies from it?

The Court: All right. Show him the exhibit.

(Mr. Riddle handed exhibit to defense counsel.)

The Court: Members of the Jury, I think we will recess for lunch until 2:00 o'clock. Bear in mind the admonition I have given you heretofore about not reading [707] anything about this in the newspapers, not listening to any radio or television broadcasts, not permit anybody to discuss it in your presence or hearing. Don't talk to any of the lawyers, parties or witnesses. Don't permit anyone to talk to you about it. If anyone should attempt to, notify the Court.

We will recess until 2:00 o'clock.

(Thereupon at 1:00 p. m. court was in recess for lunch until 2:00 p. m.)

Monday, September 9, 1968.
Afternoon Session.

(Thereupon, Government's Exhibit No. 131 was marked by the reporter for the purpose of identification.)

EUGENE MARSHALL,

having previously been sworn, resumed the witness stand for further direct examination by Mr. Riddle as follows:

Mr. Riddle: Please the Court. Sir, I will hand you what has heretofore been marked as Government's Exhibit 131, and ask you to examine it and see if you can identify it for the Court and jury, please?

A. I would say that I made this out.

Q. You made it out? A. Yes, sir. I recognize—it is printing, but I recognize——

The Court: Mr. Marshall, is that a Voluntary Fund [708] contribution sheet? Is that what that is?

The Witness: Yes, sir.

The Court: OK.

The Witness: Pipefitters Voluntary Fund sheet. I don't know now whether——

Q. (By Mr. Riddle) Sir, look at it carefully. A. —— whether I recognize the printing or not. I thought I recognized it, but——

Q. Well— A. Wait a minute. Let me see some of the people that's on here first. This writing here right here is not my writing. I mean the actual writing, and the printing either. I'd say no, this is not mine.

Q. Not part that was printed by you? A. No.

Q. Now, does that purport to be a report for the week ending January 19, 1964, on the Barnes Hospital job, with foreman Mr. E. Marshall? A. Yes.

Q. You were foreman on that job? A. Yes, sir.

Q. And you are known as E. Marshall? A. Yes, sir.

Q. It is your testimony that you didn't prepare this [709] exhibit 131, nor any part of it? A. I'd say no. The only way I would have to do this is to recognize some writing or some printing that I could identify as my own, and this writing is not mine, and the printing—I don't print like that either. So I'd say no.

Q. All right. Now, the writing you are referring to here——

Mr. London: May we see the exhibit, please?

Mr. Riddle: Yes.

Q. (By Mr. Riddle) Sir, the writing you are referring to is what? Will you tell the Court and jury that?

Mr. Daly: We are going to object to this. It hasn't been identified as his writing. We don't know who made it. It would be hearsay as far as this witness is concerned.

Mr. Riddle: Your Honor, I am not offering it for that. I am just offering it for the identification of this to determine for the Court and jury the writing that he's saying is not his. He has been indefinite about the rest, but this part he is definite about, and I'd like for that to be clear before we further identify the exhibit.

The Court: All right. He may answer.

The Witness: Shall I read it, Judge?

The Court: Yes.

Q. (By Mr. Riddle) Yes, the writing that you say was [710] not yours. A. It says, "Paid assessment on last job. Mailed in a-s-s-e-s."

Q. All right. Now, those comments refer to what three members on the crew at that time? A. Mr. O'Brien and Mr. Hutchcraft and Mr. Mayer.

Q. All right, sir. Now, you say that these sheets and this sheet, the ones with reference to the Barnes Hospital job, could have been prepared by Mr. G. Pantazi? A. This is possible.

Q. Now, Mr. G. Pantazi—what is his first name? A. George.

Q. What is he? A steward on the job? A. He acted as the steward on the job; yes, sir.

Q. Now, sir, was this sheet seen by you at the time it was prepared? Can you tell the Court and jury that? A. I don't think so. I never did go over and actually look at the sheets for any particular reason. I mean it was just between George and I, it was mutual, that some body would get the voluntary contributions to where they go, and George would take care of it. I would give him access to my books to show them the time, the people that were on the job, and then I didn't necessarily go over and—I had no reason to go look at it. I mean——

[711] Q. Sir, there is an indication after each one of these figures, "Pd.," apparently meaning paid. Did you write those on there? A. No, sir.

Q. You didn't write those on there? A. No.

Q. Do you know where Mr. Pantazi is working now, A. No, I don't; not for sure. He is still with the Thomas J. Sheehan Company is all I can tell you.

Q. He is still steward for 562? A. I have no idea.

Mr. Riddle: All right, sir. That's all we will have of this witness.

The Court: All right. You may cross-examine.

Cross-Examination.

By Mr. Randall:

Q. First, could I have this card marked, please?

(Thereupon Defendant Union Local 562's Exhibit C was marked by the reporter for the purpose of identification.)

Q. Mr. Marshall, as I understand it, you have been either a general foreman or a foreman for the past ten years? A. Yes, sir.

Q. What is your pay as a general foreman, sir? A. Well, I get a dollar over the journeyman's scale, the [712] journeyman's scale being $5.60, and I get $6.60 per hour for a gross scale of——

Q. If you work a standard forty hours? A. Yes, sir.

Q. Do you work overtime on this job here? A. Occasionally, if the job requires.

Q. Now, during that period of time, as I understand it, occasionally you have acted as steward in the absence of a regular steward? A. Yes, sir. If there wasn't, like if there was a lot of men on the job, why normally there would be another fellow to keep me from using my time that rightly belongs to the Thomas J. Sheehan Company to perform my function, then this other gentleman would perform that duty so that voluntary contributions were brought to the proper place.

Q. And among the tasks that the steward did was to take the voluntary contributions? That was one of the tasks? A. Yes, sir.

Q. In addition to that, he also handled jurisdictional disputes, and things of that nature? A. Yes, sir.

Q. He was, in fact, the representative of the Local on the job? A. Yes, sir.

[713] Q. And you, as foreman, as a representative of the company there and running the job? A. Yes, sir.

Q. And, as I understand it then, in these particular numerous records that Mr. Riddle gave to you, showed to you, some few of those were made by you while you were acting as steward? A. That's right, sir.

Q. But for the vast majority of the time, you had another man who was the steward there, whose name was George Pantozi? A. Pantazi.

Q. Pantazi; is that correct? A. Yes, sir.

Q. Now, Mr. Marshall, have you been contributing during those ten years to the Pipefitters Voluntary Fund? A. Yes, sir, I have.

Q. Did you sign a card? A. Yes, sir, I did.

Q. I hand you what's been marked Union Local 562's Exhibit No. C, sir, and I will ask you if that is the card you signed? A. Yes.

Q. And what is the date of the card? [714] A. It says January 14, 1963.

Q. Would you read the card, please? A. It is headed, "Voluntary Contribution Agreement."

"I, the undersigned, of my own free will and accord, desire to make regular contributions to the Political, Educational——"

The Court: Slow down, Mr. Marshall.

The Witness: ——"Legislative, Charity and Defense Fund which has been established and will be maintained by persons who are members of Local Union No. 562.

"I, therefore, agree to hereafter contribute—" and I have written in pencil $1.00, "per 8-hour day to said fund and authorize my contributions to be used and expended by those in charge of the fund, in their sole judgment and discretion, for political, educational, legislative, charity and defense purposes.

"I understand that contributions are voluntary on my part and that I may revoke this agreement by a written

notice to that effect mailed to the fund or to persons in charge thereof. I also understand that my contributions are no part of the dues or financial obligation of Local Union No. 562 and that the union has nothing whatsoever to do with this fund."

And then it is signed by myself, and dated January 14.

Q. What year? [715] A. 1963.

Q. Now, Mr. Marshall, during this brief period that you collected these contributions, did you give any cards similar to that to any of the men? A. Yes, sir, I did.

Q. And did some of the men sign those cards? A. Yes, sir.

Q. Did they read the cards? A. Well, this I don't know for sure, but I told them to read them, and whatever they decided upon, to either sign them and I'd see to it that they got to the proper source.

Q. Did they sign the cards in your presence, or did they, some of them sign? A. No, not in my presence.

Q. They did not sign them in your presence? A. No.

Q. In other words, you left them with the men? A. Yes, sir.

Q. And then they turned them in to you later? A. Yes, sir.

Q. And then they paid to you in accordance with what they had agreed that they would do on that card? A. Yes, sir.

Mr. Randall: May I have the card?

[716] (The witness handed the card to Mr. Randall.)

Q. And the references that Mr. Riddle brought to your attention on some of those sheets referred to their agreement on this particular card here, where he said back pay, or $1.00 per eight hours? A. Yes, sir.

Q. That's what the card says, doesn't it? A. Yes, sir.

Q. Or mailed in assessments. You were referring, or somebody was referring to this agreement here? A. Yes, sir.

Q. Which could be revoked at any moment? A. (Indicating yes.)

Q. Now, are you still paying to the Voluntary Fund? A. Yes, sir.

Q. Did anyone put any pressure on you to get you to make these payments? A. None whatsoever.

Q. Did anyone ever tell you that they were a condition to your membership in Local 562? A. Absolutely not.

Q. Or that they were necessary in order to retain your job? A. No, sir.

[717] Q. Anyone ever tell you to tell anything like that to any of the men working for you? A. Never.

Q. Did you ever tell anything like that to any of the men working for you? A. No, sir.

Q. Did any of these defendants, Mr. Callanan, Mr. Lawler, Mr. Seaton, ever say anything like that to you, or in your presence? A. No, sir.

Q. Sir, are you a Republican or a Democrat? A. I'm a Democrat.

Mr. Randall: That's all I have, Your Honor.

Mr. London: No questions.

Mr. Nangle: No questions.

Mr. Riddle: I have one or two additional.

Redirect Examination

By Mr. Riddle:

Q. Sir, the Voluntary Contribution Agreement that was introduced in evidence by Mr. Randall was dated January 14, 1963. Did you sign another one at a later date? A. This same card?

Q. Yes. A. Not that I know of. Not that I recall signing another [718] one.

Q. Well, the contribution rate as appears on this card is $1.00 here today, is it not? A. Per 8-hour day; yes, sir.

Q. All right. Well, now, has your contribution always been, since January 14, '63, $1.00 a day? A. You mean including now? Currently?

Q. Yes. Has it changed from $1.00 a day since you signed this card? A. Yes, it has.

Q. When did it change? A. I think when our checkoff system was accepted by our contractor. Our dues were taken right out of our pay.

Q. All right, sir. When your dues were taken right out of your pay? A. As I recall, that is when it was.

Q. Following the settlement of the strike? A. Yes, sir.

Q. Then this contribution was changed. Up or down? A. It was changed down, as I remember it.

Q. You mean reduced from a dollar down to something else? A. Yes, sir.

Q. Well, now, sir, to refresh your recollection, wasn't it increased to $2.00 a day? No, strike that. That's not [719] correct. That's not correct.

Sir, during the period of time that you were making contributions to the Callanan Gift Fund, do you know what the rate was? A. It was the same; the same rate. It was a half-dollar as day, as I understand it.

Q. It was a half-dollar a day? A. That is what we agreed upon to contribute.

Q. Was this at a union meeting where you agreed on this contribution? A. No, never at a union meeting. It was always at a special called meeting for that purpose, for Voluntary Fund business. That is when it was agreed upon.

Q. When did you get your notice of that meeting, or who did you get it from? A. As I remember, I got it through the mail. It was a special meeting called at such and such a time and—

Q. Who was it called by? A. It was called by our local union, I think.

Q. The meeting was called by your local union? A. Well, I mean it was a special, special business, it said, that was going to be taken up.

Q. But that was called by your local union? A. Yes.

[720] Q. Over whose signature did this call go out? Mr. Steska? A. I believe they are listed. There's several of the gentlemen listed there.

Q. That would be Mr. Callanan? A. Yes.

Q. Mr. Lawler?

Mr. London: I object to the form of the question, Your Honor. It would certainly be hearsay if we are talking about a document.

The Court: No, he can answer if he knows.

Mr. London: Also object to the form of the question.

The Court: Sustain it as to the form.

Q. (By Mr. Riddle) What names appear on the notice that you received? A. As I remember it, Mr. Riddle, I don't recall. I don't have a view of it in my mind right at the moment, but I was notified that there would be a special meeting of the Voluntary Fund—Well, it didn't say that, it just said a special order of business would be discussed.

Q. And this was on the regular letterhead of the Union? A. I don't know that I'd recognize a regular letterhead. I think it is a regular letterhead of the Union. I would imagine.

Q. Yes, sir. Now, you say that you signed this card, and I am just wondering if you will tell the Court and jury if [721] you read it over before you signed it? A. Yes, I did.

Q. Referring to the last sentence that appears on it, "I also understand that my contributions are not part of the dues or financial obligations of Local Union No. 562 and that the Union has nothing whatsoever to do with this fund", what did you understand that to mean? A. Well, I understood it to be that it was a separate and distinct fund that had absolutely nothing to do with my union, as far as my dues or assessments or anything of the like or that would pertain to my union. It was strictly a voluntary contribution.

Q. Yes, sir. Sir, do you remember seeing this large piece of equipment known as a decompression chamber? A. A decompression chamber?

Q. Yes. A large chamber that has been displayed around town in various places? A. I never have seen it. Maybe I have heard of it. I don't know much about it. Let's put it that way.

Q. Have you ever heard about the decompression chamber that the Union has? A. Yes, I have. I think I have.

Q. Does that belong to the Union? A. This, I don't know. I couldn't say. I really [722] don't know.

Q. Well, were you at any union meeting when the purchase of this decompression chamber was discussed? A. Well, I haven't been—I haven't gone to as many union meetings as I really should have, and I imagine if it was discussed at a meeting, I wasn't there, because——

Q. Well, you don't know whether this decompression chamber was purchased by the Union or the Fund? A. No, sir, I couldn't tell you.

Mr. Riddle: All right. I have nothing further of this witness, Your Honor.

The Court: Any other questions?

Mr. Daly: I have nothing.

The Court: All right. You may be excused, Mr. Marshall.

The Witness: Thank you.

(Witness excused.)

GUY RICHARDSON,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. State your full name for the Court and jury, please. A. Guy Richardson.

Q. What is your address, sir? [723] A. 8709 Nashville.

Q. In what town? A. Richmond Heights.

Q. Richmond Heights? How old are you, Mr. Richardson? A. Fifty.

Q. Are you a member of Pipefitters Local 562? A. Yes, sir.

Q. And for how long have you been a member? A. Twenty-seven years.

Q. Sir, are you presently a foreman? A. Yes, sir.

Q. How long have you been a foreman? A. Maybe ten years.

Q. And before that you were a journeyman fitter? A. Yes, sir.

Q. What job are you working on now? A. Merck Chemical Company.

Q. I couldn't hear. A. Merck Chemical Company.

Q. Are you a foreman there? A. Yes, sir.

Q. How long has that project been underway? A. About nine months.

Q. Prior to that, where did you work? [724] A. I was at the Chrysler Plant. No.

Q. How long were you there? A. Proctor & Gamble, I think before that.

Q. And approximately how long were you there? A. Oh, four or five months, I think. I'm not certain.

Q. Sir, 19 and 63, were you foreman at the Fisher Body project? A. Yes, sir.

Q. Do you remember that job? A. Yes, sir.

Q. Sir, about how many men did you have on your force then? I am talking about the year '63 at the Fisher Body job. A. I think there's at the peak, there was about 115.

Q. And did it decrease at times where the number would be much less than that? A. Yes, sir.

Q. Would it average as much as 50 or 60 throughout the period? A. Somewhere in that neighborhood; 40 or 50, maybe.

Q. All right, sir. Do you have any assistant foremen working under you on that job? A. Yes, sir.

Q. Who were they? A. Oh, at the peak I had fifteen or sixteen foremen.

[725] Q. All right, sir. Sir, during the twenty-seven years that you have been a member of Local 562, have you become acquainted with the terms "assessment" and "dues"? A. Yes; sir.

Q. Do you know what an assessment is? A. Yes, sir.

Q. What is an assessment, sir? A. Well, it is paid direct to the Local, as far as I know.

Q. And what is it based upon? Is it a flat rate, or is it tied to a formula? A. Oh, I think there is a flat rate on assessments.

Q. All right, sir. And what is a plain dues? A. Well, that is your monthly dues paid to the Union.

Q. All right. Sir, what is your understanding of the penalty involved for failure to pay your assessments and dues with your Local? A. Well, your dues must be paid or you can be expelled from the Union.

Q. What about your assessments? A. Well, assessments must be paid too.

Q. Have you always been current on your assessments and dues? A. Yes, sir.

[726] Q. Sir, as a part of your—strike that. Were you a steward at the same time you were foreman on this Fisher Body job? A. No, sir

Q. Have you ever served as a steward for your local? A. Not on any large jobs. Maybe small jobs, if you run them you may take care of the steward's job too.

Q. How are you selected, or who makes your appointment as a foreman? A. Well, it is generally made by Sheehan Company, or whoever you are working for, the contractor.

Q. Do the people at the hall have anything to say about that? A. Not that I know of. I guess in some instances maybe they will, but the company generally takes care of that.

Q. All right, sir. Do you get paid more as a foreman than you would as a journeyman? A. Yes, sir.

Q. How much more per hour? A. Right now a foreman is 50 cents an hour.

Q. As part of your job, and a part of your activities when you were working on the Fisher Body plant, did you have occasion to collect money from members working on

your crew? A. I don't think I did there. I think there was a [727] steward took care of it.

Q. Sir? A. A steward took care of it, as far as I know.

Q. Well, do you know who the steward was? A. Tom Conroy.

Q. Mr. Tom Conroy? A. Yes, sir.

Q. Well sir, throughtout the year 1963, on the Fisher Body job, did you make any collections? A. I may have right at the beginning, before they had a steward. I don't really recall. It started out as a fairly small job. I may have then.

Q. Well, sir, did you make out the reports, or did the steward make them out? A. I am pretty sure he made them out. I couldn't say definitely though.

Q. Could you tell by looking at them whether or not you made them out, or he made them out? A. Yes, sir.

(Thereupon Government's Exhibit No. 132 was marked by the reporter for the purpose of identification.)

Q. Handing you what's been marked Government's Exhibit 132, I ask you to examine it and see if you can tell the Court and jury if you made that one out? [728] A. No, sir, I didn't.

Q. You did not make it out? A. No.

Q. Can you identify the handwriting of the man that did? A. No, I couldn't.

Q. Well it appears to have your name at the top as the foreman, G. Richardson. A. That's right. I was the foreman, but I don't think that's my handwriting.

Q. You say you don't think. Are you quite reasonably certain that it is not? A. Well, I very seldom print. I generally write them in longhand, and as I say, I don't think that's my printing.

Q. Well, sir, assuming that your steward made this form out, and the others for that period, where did he get this

information that went on the sheets? A. Well, as far as I know, whoever paid him came to him and gave him the money, and he would make the sheet out.

Q. Well, where would he get his information as to the number of hours worked? A. From my time book.

Q. From your time book? A. Yes, sir.

Q. Did you give him the time book? [729] A. Yes, sir. It was there for him to look at whenever he wanted to.

Q. Did you take any of the money into the hall resulting from these collections? A. No, sir.

Q. Did you ever? A. Not on that particular job. I may have once in a while, but as a rule Mr. Conroy took them in.

Q. I see. Sir, in connection with these collections, did you have occasion to converse with the steward, Mr. Conroy, about them and about who was paying and who wasn't paying? A. No, sir. That was his job.

Q. Did you have occasion to discuss with him back assessments? A. No, sir.

Q. As to who was behind? A. No, sir.

(Thereupon Government's Exhibits Nos. 133, 134, 135, 136, 137 and 138 were marked by the reporter for the purpose of identification.)

Q. Sir, I want to show you what's been marked Government's Exhibits 133 through 138, and ask you to examine them and see if you can tell the Court and jury if you prepared any of those reports? Or if you made any of the entries [730] that appear on any of those reports? A. I don't think I made any of these out.

Q. You didn't make any of them out? A. No, sir.

Q. And none of the entries, or none of the writing that appears on any of them, is in your handwriting? A. No, sir. Not as far as I know. As I say, I generally wrote. Anything I wrote, I wrote in longhand.

Q. I notice there is some lettering on here that is in longhand. For example, I call your attention to the words "back assessment." A. No, sir. I have never marked a sheet "back assessment."

Mr. London: May we approach the bench?

The Court: Yes.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. London: At this time, if the Court please, we want to object to Mr. Riddle's referring to statements as back assessments on these exhibits, which the witness has indicated are not in his handwriting. I'd like to call to the Court's attention that this has been a repeated pattern on the part of the Government to refer to these statements, which are obviously hearsay, on these documents, that they were not [731] prepared——

The Court: These are the documents of the Voluntary Fund.

Mr. Riddle: Yes, they are, Your Honor.

Mr. London: We still do not know who made these entries.

The Court: Are they the documents of the Voluntary Fund, or aren't they?

Mr. London: I will ask the Government. They are using these documents.

Mr. Riddle: Your Honor, they are the documents that were referred to the grand jury in response to a subpoena, and these are copies of them. The originals are in the hands of the defendants. They were handed to the grand jury and then to us as original records of the so-called Voluntary Fund.

Mr. London: The point that I am making, Your Honor, is that the witness that Mr. Riddle has on the stand, it is his witness, and he said that he did not prepare the entries on these documents, and Mr. Riddle uses the document to refer to the words "back assessment," which we feel is highly prejudicial to the defense and the defendants in this case, and we ask that it be stricken, the jury instructed to disregard it, and a mistrial be declared, and in the absence thereof we would certainly request the Court to instruct Mr. Riddle to [732] discontinue the tactics of continuing to refer to these.

The Court: I will overrule all requests, with the exception that I don't think you ought to refer to those items on there, Mr. Riddle, and I think you can refer to the handwriting and ask him if it is his or not. On the other hand, gentlemen, this man is an employee of 562, even though he is called by the Government.

Mr. London: This man is what?

The Court: He is in the employ of 562. He is a member of 562. All right.

Mr. Riddle: Your Honor, I don't really intend to pursue this greatly further, except for the purpose of pinning this witness down as to whether these are his, rather than another witness come in and say, "Well, no, I didn't write that. Somebody else did." We are dealing with their records, and I am doing the very best I can to get them identified.

The Court: All right.

(Thereupon the trial was resumed before the jury as follows:)

Mr. Riddle: Sir, I believe that in view of the testimony, we will not have any further questions of this witness at this time. We'd like to reserve the right to recall him.

The Court: All right.

[733] **Cross-Examination.**

By Mr. Randall:

Q. Mr. Richardson—pardon me, Your Honor. I want to get this marked first.

(Thereupon Defendant Union Local 562's Exhibit D was marked by the reporter for the purpose of identification.)

Q. Mr. Richardson, as I understand it, for a good many years you have worked as a foreman on various Pipefitter jobs; is that correct, sir? A. Yes, sir.

Q. And you are presently working as a foreman on some job? A. Yes, sir.

Q. What job is that? A. Merck Chemical, and partly on Coca-Cola.

Q. And you have been a foreman at least ten years? A. Well, roughly. Maybe not quite that long. Maybe eight years. Somewhere in that neighborhood.

Q. And for approximately seventeen or eighteen years prior to that time you worked as a journeyman pipefitter? A. Yes, sir.

Q. And what is your rate of pay as a foreman, sir? A. Well, it is 50 cents more than a journeyman.

Q. Do you know what that is? [734] A. Well, I think that journeyman—we just got a raise. I think a journeyman is a dollar sixty-two and a half, or the foreman is a dollar sixty-two and a half.

Q. Now, as a foreman, it is your job to see that the men get the work done? A. Yes, sir.

Q. In other words, you are more or less the manager of the job; is that correct? A. That's right.

Q. And ordinarily, as a foreman, you have no function with respect to union duties? A. No, sir.

Q. And that is the job of the steward on the job? A. Yes, sir.

Q. However, in some occasions where the job was small, you acted as steward also; am I correct? A. That's right.

Q. And in those few occasions, you may have collected or received the contributions for the Voluntary Fund? A. Yes, sir.

Q. Now, as a member of the Union, you are familiar with the fact that your By-Laws and Constitution and the By-Laws and Constitution of the National Association require the payment of dues and assessments? [735] A. Yes, sir.

Q. And if they are not paid, the member may be expelled from the Union; is that right? A. That's right.

Q. And your contract with the various construction people require that they either be members of the Union or join the Union at a certain time; isn't that correct, sir? A. Yes, sir.

Q. So that, in effect, if men do not pay the dues and assessments, they may not work? A. Well, I don't collect the dues or assessments.

Q. You don't collect them? A. No, sir.

Q. But they have to pay them in order to work? A. Yes. They pay those to the union hall, not to me.

Q. In fact, they are checked off at the present? A. Yes, sir.

Q. But years ago they paid them at the union hall themselves, and also sometimes on the job, didn't they? A. Yes, sir.

Q. Now, this Voluntary Fund, of course, so far as—did you ever tell anyone that it was necessary to pay into the Voluntary Fund in order to continue their employment or their membership in the Local? [736] A. No, sir.

Q. Did anyone ever tell you to tell anyone—— A. No, sir.

Q. ——this thing? Did Mr. Callanan, or Mr. Lawler, or Mr. Seaton ever tell you that you must pay into the Voluntary Fund in order to continue working? A. No, sir.

Q. Did they ever tell you to tell anyone else that? A. No, sir.

Q. Did you ever hear anyone told that? A. No, sir.

Q. Have you contributed to the Voluntary Fund throughout its existence? A. Yes, sir.

Q. And did you sign a Voluntary Agreement Card? A. Yes, sir.

Q. I hand you what's been marked Union Local 562's Exhibit D, and I will ask you, sir, if that is the card you signed? A. Yes, sir.

Q. And what is the date of the card? A. January 15, 1963.

Q. And is it witnessed by someone? A. Thomas Conroy.

[737] Q. And who was he, sir? A. Steward.

Q. He was the steward? A. Yes, sir.

Q. Did you ever pass any of these cards out to any of the people who worked for you on these jobs where you were the foreman? A. Yes, sir. The cards are there when a man starts, where they are there for him to sign if he wishes.

Q. And did you give them any instruction with respect to these cards? Any of the men? A. No, sir. Just told them to read it, and it was up to them.

Q. And you told him it was up to him as to whether he signed it or not? A. Yes, sir.

Q. And whether he contributed or not? A. Yes, sir.

Q. Do you know anyone who does not contribute to the Voluntary Fund? A. There's a few. I don't really know whether they do or not. They don't give it to me. It is up to them if they want to give it to me or take it in. They don't give it to me.

[738] Q. In other words, there's a few on some of the jobs, they don't contribute to you? A. Yes, sir.

Q. And you don't know whether they went to the hall and contributed or not? A. No, I don't.

Q. Did you ever put any pressure on them to get them to contribute? A. No, sir.

Q. Do you know of anyone who did that? A. No, sir.

Q. Do you know whether or not they contribute at all? A. I say I don't know, if they don't give it to me. They can either give it to me and I will take it in to save them a trip, or they can take it in themselves.

Q. And you don't know whether they contribute or not? A. I don't know whether they do or whether they don't.

Q. And what political party do you belong to, sir? A. Democratic.

Mr. Randall: That is all, Your Honor.

The Court: Anything else?

Mr. London: No questions.

The Court: Redirect?

Mr. Riddle: Yes, Your Honor.

[739] **Redirect Examination.**

By Mr. Riddle:

Q. Sir, on these very few people that haven't paid to you, do I understand your testimony to be that you told them that they can pay it to you or take it in to the hall, whichever they want? A. Yes, sir.

Q. Are those the two alternatives that you offered them, namely, one, pay it to you, or pay it in the hall? A. No. I just tell them if they want to give it to me, I will take it in for them. If they don't, they can take it in themselves. It doesn't make any difference to me.

Q. Just as long as they pay it? A. No. That is their business, not mine.

Q. Sir, I believe you said that these Voluntary Cards are on the job when you people show up? A. Yes, sir.

Q. Where do those cards come from? A. Well, when I say they are on the job, sometimes they are. If you are out of them, it may be a few days or a week until I get some more. If I need them, when I go in to the hall I pick some up and have them there available for them.

Q. Sir, throughout the period of time that you have been a foreman, and during this period of time that you have [740] been giving these cards, or making them available to people who are coming on the jobs, on any occasion has a person told you, "No, I will not sign"? A. A few times.

Q. Can you give us the names of those people? A. No, I don't believe I can. The last time I can remember was at the Chrysler plant, but I don't remember the names. They were fellows that I weren't familiar with.

Q. Did they stay around on the job? A. Yes, sir.

Q. How long? A. Until there was a layoff, or the job was finished.

Q. Until there was a layoff. All right, sir. Now, then when a layoff comes, who makes the determination as to whom is laid off and who is re-employed? A. Myself or my riding foreman.

Q. Your riding foreman is the man senior to you who is also a member of Local 562? A. He is a member of 562, but he is a riding boss for the contractor.

Q. Sir, on this job out—did you say it was Fisher or Chrysler? A. Chrysler, I believe.

Q. Chrysler. You say there were three people that refused? [741] A. No. I said I remember a few not signing them. I don't know exactly how many, or their

names, but it seemed to me there was a couple there that didn't sign them.

Q. Oh, just a couple now? A. Yes.

Q. In addition to this couple, has anybody else, to your knowledge, throughout all these years, said that he would not sign a card when he came on the job? A. Not that I can remember, but most of the big jobs I didn't have charge of signing the cards.

Q. I am just talking about the ones that you saw. A. Yes, sir.

Q. And had personal knowledge of. You say there was a couple. Do you remember their names? A. No, sir, I don't.

Q. Do you remember how long they worked? A. Well, practically to the end of the job. When the job was done, why the last week or so everybody was laid off.

Q. Well, were they laid off earlier than anybody else? A. Not that I know of; no. No.

Q. How long did they work? A. We were there, I guess a year and a half or two years.

Q. How many on that crew? A. On my job, I had approximately fifty men.

[742] Q. All right, sir. Now, then, these two people you were talking about, you say they refused to sign a card? A. When I say—I say there was a couple that I don't remember signing it. There was also a steward there that took care of it too.

Q. You are not telling the Court and jury that they didn't sign a card? A. That's right. Seems to me there was a couple. I couldn't swear to that, or how many, but there was a steward that handled affairs out there.

Q. Did these two pay their doby? A. That I couldn't say.

Q. You are familiar with the term "doby", are you not? A. Do you mean Voluntary Fund?

Q. My question is are you familiar with the term "doby"? A. I think so.

Q. Have you ever heard it before? A. I don't think I have.

Q. Doby? A. No.

Q. You don't know what it is? A. No.

Q. You don't know whether these two people paid into [743] the Fund or not? A. No, sir, I don't.

Q. If you wanted to know, how would you go about finding out? A. I'd probably have to ask the steward.

Q. All right. And if the steward didn't know, could you call the hall and find out if they had paid? A. I don't know whether they could give me that information or not.

Q. Have you ever called down there to find out if somebody paid? A. No, sir, I didn't.

Q. You never have. Nothing further.

Recross-Examination.

By Mr. Randall:

Q. Mr. Richardson, in the ten years that you have acted as a foreman on jobs, have you ever laid any man off because he did not contribute to the Voluntary Fund? A. No, sir.

Q. Has anyone ever asked you to lay anyone off because he did not contribute to the Voluntary Fund? A. No, sir.

Q. Has any of these defendants ever asked you to do that? A. No, sir.

[744] Q. Have you ever given a man less overtime because he didn't contribute to the Voluntary Fund? A. No, sir.

Q. Did anyone ever ask you to do that? A. No, sir.

Q. Did you take any interest at all in the Voluntary Fund, except when you had to collect it? A. No, sir, I didn't.

Q. You just devoted yourself to running the job and running the men on the job? A. That's right.

Q. Exclusively? A. Right.

Mr. Randall: That's all.

Redirect Examination.

By Mr. Riddle

Q. In answer to Mr. Randall's questions, were you referring just to these two people that didn't sign a card, as far as you understood? A. Yes, sir.

Q. All of the other people that worked under you, so far as you knew, signed the card and paid the money? A. I imagine they did. There is nobody that told me any different.

[745] Q. So there wasn't any occasion for you to lay them off, if you wanted to? A. No, sir. Not when I was collecting it. If I wasn't collecting it, I didn't have anything to do with it.

Q. When you were collecting it, everybody paid, didn't they? A. Not everybody.

Q. Not everybody? A. No.

Q. Do you recall somebody that didn't pay? A. Yes, sir. I have a man that I told him he could either give it to me or take it in himself. Whether he pays it or not, I don't know.

Q. You told him he had those two alternatives? A. I just told him if he wanted me to take it in for him, he could give it to me and I would take it in, I would save him a trip, but that was up to him.

Q. Do you know his name? A. Yes, sir. Charlie Riley.

Q. When was that? A. On the Merck Chemical.

Q. How long ago? A. Well, right up to the present time.

Q. You don't know whether he is paying into the hall [746] or not? A. No, sir, I don't.

Q. Is that the only man on that job that is not paying directly to you? A. Yes, sir.

Q. I see. Well, sir, in answer to Mr. Randall's question, you said that you have never denied a man his share of the overtime because he hadn't paid. The fact of the matter is nobody except this fellow O'Riley, so far as you know, has refused to pay, or hadn't paid. You are not even sure about that? A. That's right.

Mr. Riddle: I have nothing further.

The Court: Anything else?

Mr. Randall: One question.

Recross-Examination.

By Mr. Randall:

Q. On the other hand, you don't know whether they are paying or not, do you? Many of the people? A. No, sir, I don't.

Mr. Randall: That's all.

Mr. Riddle: Nothing further of this witness.

The Court: Step down.

(Witness excused.)

[747] **JOHN B. SEECK,**

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. You are John B. Seeck? A. That's correct.

Q. Your last name is spelled how? A. S-e-e-c-k.

Q. What is your address? A. 9423 Zane Drive, Affton, Missouri.

Q. Are you a member of Local Pipefitters Union 562? A. Yes, sir.

Q. How long have you been a member? A. About twenty-seven and a half years.

Q. Are you a foreman? A. Sometimes.

Q. Are you a foreamn at the present time? A. No, sir.

Q. What job are you working on now? A. Which one?

Q. Are you working on a job down at Sikeston, Missouri, now? A. No, sir.

Q. Have you been down there recently? [748] A. No, sir.

Q. Which job recently have you been a foreman on, sir?

Q. Are you a foreman at the present time? A. No, sir.

man.

Q. General foreman. All right. What job have you been a general foreman on? A. The KFVS TV Building, the Naval Building, the two college high rises, the Corp's store and the Lutheran School.

Q. These are all projects located where? A. In Cape Girardeau, and there is one on the old folks' home which is outside of Cape Girardeau.

Q. Over what period of time have you been working on those jobs at Cape Girardeau? A. Since, I believe it was the first or second week of September, last year.

Q. All right. Since September of '67? A. Yes, sir. That's right.

Q. Now, have you been working pretty regularly down at Cape on these various jobs? A. This is the second time that I was down there. I was down there approximately thirteen months, but it had been eleven months previous to this September.

Q. All right, sir. Now, what size crew do you have under your supervision as a general foreman? [749] A. Do you mean now on these particular jobs?

Q. Yes. A. It varies from ten to fourteen, fifteen men.

Q. Ten to fourteen, fifteen men? A. Yes, sir.

Q. Sir, on the job at Cape Girardeau—By the way, how far south of St. Louis is Cape Girardeau? A. One hundred twenty-six miles.

Q. Do you have people working on that job, on those jobs, from the Local Union 317? A. No.

The Court: 318.

Mr. Riddle: 318, rather. Excuse me.

A. 318; yes, sir.

Q. (By Mr. Riddle) Do you have people working on the job also who are members of 562? A. Yes, sir.

Q. What is such a project or job where members of 318 and 562 are working side by side? A. What was that again.

Q. Would you give the Court and jury the name of a job project on which members from 318 and 562 are working side by side? A. Any one of those jobs that I mentioned.

[750] Q. All right. Let's take the KFVS Station. How many people from 318 are working on that job, or were working? A. On that job, from six to eight men.

Q. All right. And how many on that job from 562? A. At different times there could have been one or two.

Q. All right. Sir, as a general foreman, regularly on a Monday did you make a collection of money from the people on your force? A. No, sir, I did not. As a rule I would do it on Friday.

Q. On a Friday. Did you do it every Friday? A. No, sir. I waited and done it every other Friday.

Q. So you did it what, twice a month? A. Twice a month is——

Q. All right. Approximately then. How did you make these collections? Cash or check? A. Some cash, some by check.

Q. All right, sir. When you made the collection, did you fill out a form? A. Yes, sir.

Q. And put the man's name and whether he was a member of Local 318 or 562? A. Yes, sir.

Q. And put the amount that he paid to you? [751] A. Yes, sir.

Q. And sent that all in to the union hall? A. Yes, sir.

Q. Sir, referring your attention to the KFVS job, how much per day did you collect yourself from the 318 members? A. $2.00 per day.

Q. How much did you collect per day from the same job at KFVS from the 562 members? A. A dollar per day. No, it was 50 cents per day. I am sorry.

Q. Fifty cents per day? A. Yes, sir.

Q. If they worked overtime, would your collections from them be greater? A. We did not work any overtime.

Q. It was all straight forty hours a week? A. Yes.

Q. So your collections were all at an even figure? A. Yes.

Q. For the regular members, $2.50 a week? A. That's right.

Q. And for the Cape Girardeau members, $5.00 a week —I mean $10.00 a week? A. That's right.

[752] Q. That's four times as much from the Cape members than from the 562 members? A. $2.50 from the 562, and $10.00 from the Cape.

Q. That is four times greater? A. That's right.

Q. I see. Sir, did the people who were working, and who were members of the Cape local, to your knowledge, were they aware that they were paying four times as much to you in cash each week as the regular 562 members? A. Yes, sir.

Q. Did they know that? A. (Indicating yes.)

Q. Well, sir, just how do you go about making this collection? Where does it occur, and just what does take place? A. Well, as a rule, on a Friday afternoon, or sometime during the day, after lunch, or sometime like that, we would, just when we finished eating, as a rule, I would say, "Meet me at my plan desk," and I would fill out the sheet, and that's the way it was taken care of.

Q. Who decides when and where the collection will be made? You or them? A. Myself, because I could have been on any different job, or anything, and I don't like to carry money around with me for fear of losing it or something like that.

[753] Q. Well, at whose direction do they come to your office and to your place to make the payment? A. It would, as a rule, be through my foreman.

Q. Did you tell your foreman to tell the boys to come in now? A. Yes, or he would go around and collect it on the job for me.

Q. Does he ever go out and collect without your specifically telling him to? A. No.

Q. I mean on each and every occasion, I am talking about the KFVS job, or other jobs down at Cape Girardeau. Did you tell the foreman to pick up the money, and he waits until he hears from you? A. That's right.

Q. Do you tell the foreman how much to pick up from the Cape members? A. Well, it is just a standard amount, I mean.

Q. Do you tell him that employees or members so-and-so from Cape, he owes X number of dollars this week? A. No.

Q. What do you tell him? A. I don't tell him anything. Just tell him to pick up the contributions and not take it in.

[754] Q. Well, do you tell him how much the contribution is? A. No. It's just been—no. If you work eight hours, it is $2.00, and we pay 50 cents.

Q. You pay 50 cents, and they pay $2.00? A. Yes.

Q. Sir, any of the fellows down there refuse to pay you this? A. No, sir.

Q. Are you familiar with the term "doby"? A. Well, the only way that I know too much about the term doby is my little girl's girlfriend has a horse down there named Doby.

Q. I see. My question, sir, I suppose, should be more specific. Have you ever heard any of the fellow members of the Cape 318 refer to these "contributions" as doby payments? A. No, sir, I can't say that I have.

Q. Are you telling this Court and jury that you never heard of the word "doby", except as being the name of your little girl's horse? A. I didn't say my little girl's horse.

Q. All right. Whatever you said. A. I'm saying if I heard it, it went over my head. I'm not familiar with that term; no, sir; I am telling you exactly that.

[755] Q. That term is foreign to you? A. As far as I am concerned.

Q. Except for the way you described it. Sir, these people that came to you in the KFVS job, did you give them one of these contribution certificates or cards? A. Yes, sir.

Q. When did you give it to them? A. When I first went on the job.

Q. When you went on the job? A. Yes.

Q. Was the job just beginning then? A. Yes, sir. As far as our work was concerned, the job had already been started, as far as the carpenters and the ironworkers and electricians, but as far as the air conditioning and piping, when I went down there our work was just beginning.

Q. So you went there in charge of the job. You were going to be responsible for all the pipefitting that was done there? A. That's correct.

Q. And you got a crew or a force to work under you? A. That's correct.

Q. So on a certain day, presumably in the morning, you and your crew got together? A. That's right.

[756] Q. And you and what? Nine or ten people? A. No. When I first went down there, I started out with four men, I believe.

Q. Four men. So—Were these Cape men? A. I would have look at my records to be certain on that, but from memory, to the best of my knowledge, I believe they were all Cape men.

Q. So you and the four of them were together the first day of the job? A. That's right.

Q. All right. Did you give them the cards then? A. That's correct.

Q. The first time after you got there? A. Oh, sometime in the morning. You are going back to September. I

couldn't honestly say whether it was five minutes after 8:00 or two minutes after 8:00. Sometime during the day when they filled out their state and federal forms for the company.

Q. In other words, when they were filling out all the other forms? A. That's right.

Q. You just give them this form also? A. Yes.

Q. And then sign it? [757] A. Yes, sir.

Q. Did you tell them what it was? A. Yes, sir. I told them to read it.

Q. Did they read it? A. Well, I would suppose so.

Q. Well, could you tell if they were reading it, or did they just sign it? A. Well, what every man was doing—one might be over in the corner here, and one there and one someplace else. I didn't watch to see just exactly which was doing what.

Q. The fellows that went down with you who were members of 562, did they sign a new card on that job? A. Yes, sir.

Q. They signed a new card also? A. Yes, sir.

Q. Did the people from Cape Girardeau fill in the cards to show that they are going to pay $2.00 a day? A. Yes, sir.

Q. They filled in the amounts? A. They didn't fill in the amount, I don't believe. I don't really remember, to be truthful with you. You have to look at the cards.

Q. Yes, sir. Sir, is there any difference in the jobs that the fellows who pay you $2.00 a day do, from the fellows [758] who pay you 50 cents a day? A. In one or two instances, it is.

Q. Well, is the difference in the rate related to the type of work they do? A. No.

Q. Is it related to the amount of pay they get? A. Sometimes. Some of them are foremen.

Q. Well, I am talking about excluding foremen. A. Yes, but you didn't say that.

Q. All right. Do foremen pay more than regular people? A. No. The foremen are paid more.

Q. Yes, sir, but do they pay more into this Fund? A. No.

Q. That you collect every Friday? A. No, sir.

Q. All right, sir. My question, sir, was is the amount that the people from Cape pay, and the amount that the people from 562 pay, is that related to the amount of money that they get per hour? A. No, sir.

Q. So if they are making $10.00 an hour, and if in Cape they still pay two bucks a day—— A. How much an hour?

Q. If they are making $10.00 an hour, even if they were [759] making $10.00 an hour for an 8-hour day, they pay two bucks? A. That's right.

Q. The people from St. Louis, if they are making $10.00 an hour, they still pay 50 cents? A. That's right.

Q. Or the figures could be different from that. The amount of payment would still be the same for eight hours? A. That's right.

Q. Now, sir, at the same time that the people from Cape Girardeau are paying you $2.00 a day, or $10.00 a week, or $40.00 a month per head, are they also paying union dues to their Local 318? A. I wouldn't know. You'd have to ask them that.

Q. You don't know that? A. I wouldn't know.

Q. Or any local assessments? A. I wouldn't know that.

Q. To 318? A. That would be up to them. Their union business agent would have to determine that. That's their local's business, not mine.

Q. I see. Are the people who are members of 318, as far as you know, residents of Cape Girardeau, or in that immediate vicinity? [760] A. No.

Q. Where do they live, generally? A. Well, they could live in St. Louis. They could live any place.

Q. And still be a member of Cape Girardeau local? A. That's right.

Q. Well, the people working on the job at KFVS, where do they live? A. Some are in Sikeston; some in Jackson; some in Poplar Bluff.

Q. That is all in the vicinity of Cape Girardeau? A. That is eighty miles away, some of those towns.

Q. Jackson is—— A. Poplar Bluff is.

Q. How far away is Jackson? A. About eleven miles.

Q. And Sikeston? A. About thirty-seven.

Q. Some live right in Cape Girardeau, do they not? A. Yes, sir.

Q. Sir, in discussing this fund, or the payments, with the boys from Cape Girardeau, at the rate of $10.00 a week, have you ever explained to them what use is made of this money that you collect each week from them? [761] A. No, sir, I don't believe I have. That isn't up to me to decide what is done with it.

Q. You have never explained to them what is happening to their forty bucks a month? A. No, sir. I do know that in one particular instance I told them that I knew of a Girl Scout leader that received money from the Charity Fund for her Girl Scouts to help make Christmas presents for the aged. I do know of that to be a fact.

Q. Is that the only time you ever explained what happened to their money? A. It just particularly happened one time I knew this had happened, around Christmas-time.

Q. You just told the boys that? A. I don't know how many of them I told. I mentioned that it had taken place.

Q. Did it appear to make them happy? A. They thought it was a good thing.

Q. Did they ever ask you why they were contributing four times as much as their fellow workers from St. Louis? A. No, sir.

Q. None of them ever asked you that? A. No, sir.

Q. Now, sir, is that a fairly typical situation that you [762] have run into down at Cape Girardeau and that area, where you have members of 562 and 318 working side by side? A. Would you state that again, please?

Q. Is this a fairly typical—you have described the situation at KFVS. A. Yes, sir.

Q. Where you have got 318 people working side by side with 562 people. A. Yes, sir.

Q. And the 318 people are paying four times as much to you each week as the 562 people. A. Yes, sir.

Q. Is that a fairly typical situation? A. Yes, sir.

Q. Does that happen on all the jobs down there? A. I can only vouch for mine.

Q. And that is what? Four or five that you gave me? A. Yes, sir.

Q. Sir, were you working down in that area during the period of the Callanan Gift Fund?

Mr. Daly: Your Honor, we object to that. Ask all previous objections to go to this question.

The Court: It will be overruled.

The Witness: What did you say?

[763] Q. (By Mr. Riddle) Do you remember the Callanan Gift Fund? A. Yes, sir, but I can't remember when it took place.

Q. All right. Were you working down around Cape Girardeau? A. I don't know. I mean I couldn't honestly say. I don't remember when or where I was. You would have to look at my time sheets to see where I was at that time. I have been on so many jobs out of town.

Q. Yes, sir. You don't remember what job you were working on during that period? A. No, sir.

Q. You remember the time you were collecting money for it? A. To be truthful with you, I don't.

Q. Do you remember paying into it yourself? A. That is a long time ago, and I couldn't honestly say I remember how long we paid into it, or anything else. I really don't know.

Q. Does 1966 appear to you to be a long time ago? A. I would say so.

Q. You don't know if you paid anything in the Callanan Gift Fund or not? A. I would say that I paid into it, yes, but, I said I don't remember when, as far as what month, or week, or date, or [764] anything like that.

Q. Or how long? A. No, sir.

Q. Or how much? A. No, sir.

Q. Well, now, sir, over a period of time, I take it you send in to the union hall a very substantial amount of money in check or cash? A. Yes, sir.

Q. Hundreds of dollars? A. I would say so.

Q. Have you ever attended a meeting in which an accounting of these funds was made? A. With my being out of town, I would venture to say I don't get to one meeting a year.

Q. Sir, my question was have you ever attended a meeting at which an accounting for these funds was made? A. No, sir, I don't guess I have, that I can remember.

Q. All right, sir. Have you ever received a notice of a meeting from the Union, or from anybody else, at which the affairs of this Fund, or the handling of this money was to be discussed? A. If there was one, I don't remember.

Q. Well, is it your answer you have not received such [765] a notice? A. No, sir. It is I don't remember.

Q. Have you ever been told what use or what purpose is made of these funds that you have sent in over a period of years? A. Well, I do know that over the radio I have heard where we have contributed to those telethons, and that substantial amounts——

Q. Sir, is it your testimony in front of this jury, His Honor the Court, that these boys down at Cape Girardeau voluntarily pay $10.00 each week into this Fund? A. Yes, sir.

Q. Is it your testimony that those are voluntary payments? A. Yes, sir, it is.

Q. Is it your testimony that their generosity, or that their desire to contribute exceeds the desire to contribute of the 562 people four times? Are you telling this Court and jury, to that extent?

Mr. Randall: I am going to object to that question as argumentative.

The Court: I will sustain the objection. I think it is argumentative.

Q. (By Mr. Riddle) Sir, had any of the people down at Cape Girardeau contributed more on any given day than $2.00, [766] or more on any given week than $10.00? A. You mean on my job?

Q. Yes. A. No, sir.

Q. Has any one of them contributed a penny less than $2.00 a day, or $10.00 a week? A. Yes, some of them have.

Q. Less than that? A. Less than $2.00 a day; yes.

Q. People from Cape Girardeau? A. Yes.

Q. Who? A. I couldn't remember. You look at my sheets. You have my sheets, I believe, and they will show them.

Q. You mean some of the Cape boys don't pay $2.00 a day? A. If they don't work. If they only worked a half day, they only paid a dollar.

Q. I am saying for every day that they work eight hours, have any of them ever paid a penny less than $2.00 a day? A. No.

Q. Sir, you just answered my question by saying that I had your sheets here. A. Um hmm.

Q. How did you know I had your sheets here? [767] A. I just imagined that you had them here.

Q. What sheets are you talking about? A. I would imagine that those sheets I was talking about was the sheets that we turn in every day.

Q. Have you talked to previous witnesses before you come in here today? A. No, sir.

Q. Have you talked to any other foreman? A. No, sir.

Q. Today? A. No, sir.

Q. My question is, sir, what made you think that I had your sheets here? A. Well, if I remember right, it was in the paper about two or three weeks ago where they had confiscated all the Voluntary Fund sheets, and everything else.

Q. I see. So you assume from that—— A. So I assumed from that that you had them all.

Q. All right, sir. Have you handed in all the sheets that you prepared, to the union hall? A. Yes, sir.

Q. Do you mail it in, or take it in? A. No, sir, I take it in almost all the time.

Q. You just take it by? [768] A. Yes, sir.

Q. I just have one other question. On occasions have you gone by the union hall down at Cape Girardeau to pick up some payments? A. Yes, sir.

Q. What kind of payments would you pick up there? A. They were in an envelope. I just took the envelope in to the hall.

Q. How would you know what was in the envelope? A. I was told that they were assessments—or contributions, rather, to the——

Q. Sir, do you get the term "assessments" and "contributions" confused now and then? A. Yes, sir, sometimes I do.

Q. These look a great deal like assessments, don't they? A. No, sir. They look more like contributions. That is what the card says.

Q. Is there any difference between these assessments into this Fund and the assessments that you are charged normally by the Union? Is there any difference between this assessment into the Fund and the assessment that goes in to the Union? A. This isn't an assessment. This is a contribution.

Q. Why were you referring to it as an assessment a minute ago? [769] A. I would say a slip of the tongue.

Q. Isn't it a fact that the word "assessment" is used to describe this Fund out on the job all the time? A. Contributions were supposed to be.

Q. Sir, has anyone told you to be careful not to call these assessments? A. No, sir.

Q. Do you, on other occasions, get confused and refer to them as assessments rather than contributions? A. I would say that sometimes I might make that statement and be wrong in doing so.

Q. Sometimes you make that statement to the fellows on the job that you are collecting from, don't you? A. I wouldn't say so. Years ago I used to call them that, not knowing that I was right or wrong.

Q. Years ago you used to call them assessments? A. I did; yes, sir. And I found out I was wrong.

Q. Who told you you were wrong about that? A. Everybody.

Q. By everybody, you mean who? A. I couldn't—We are talking about a long time ago, and I cannot say I remember any specific names or anybody telling me that.

Q. You say a long time ago. Were the collections the [770] same and they were collected in the same manner? What you called then as assessments? A. I did, years ago; yes.

Q. And you were told to start calling them voluntary contributions in January of 19 and 63 when the cards were first signed, and that is when you first heard of a voluntary contribution? Do you remember that occasion when you first signed a card? A. I remember a long time ago. I couldn't say what date it was or what year. It's been a long time ago though.

Q. You were told at that time to start calling them voluntary contributions? A. I couldn't honestly say yes or no to that.

Mr. Riddle: I see. I have nothing further.

The Court: We will have our afternoon recess. Bear in mind the admonition I have given you heretofore.

(Following a brief recess, the further following proceedings were had before the jury:)

(Thereupon Defendant Union Local 562's Exhibit E was marked by the reporter for the purpose of identification.)

Cross-Examination.

By Mr. Daly:

Q. Mr. Seeck, I will show you what's been marked as Union Local 562's Exhibit E, and ask you to look at that, sir. [771] A. Yes, sir.

Q. Could you tell the Court and jury what that is? A. That's the Vountary Contribution Card that I signed.

Q. Is that your signature on the bottom? A. Yes, sir.

Q. When did you sign that? A. January 11, 1963.

Q. Now, you testified in direct examination of Mr. Riddle that this one particular job started off with perhaps four or five men. Do you recall that, sir? A. That was the KFVS job?

Q. Yes. And then maybe it peaked out at ten or twelve? A. No. I said that is how many men I have had since I have been down there; not on just the one job; on all the jobs I was running. At the peak it was ten to thirteen, fourteen men. I'd have to check the time book to see how many there was.

Q. Are you saying on this one job then that it peaked out at about ten or thirteen men? A. No. I'd say it peaked out at about eight men.

Q. Then the other men that came, other than the four or five that you started out with, would they come in one at a time as the work progressed, or would they come in as a group? A. One at a time, or maybe two at a time, depending on how I needed them.

[772] Q. When they came in, would you give them one of these Voluntary Cards? A. I gave them one of those cards when they filled out their state and federal income tax cards.

Q. Would you ask them to sign the cards? A. Yes, sir.

Q. Did you ever tell them that they had to sign the cards? A. No, sir, I did not.

Q. Did you ever tell them that if they did not sign the card that you weren't going to put them to work that morning? A. No, sir.

Q. You then collected bi-weekly; is that correct? A. That's right.

Q. And you took that money in to St. Louis yourself then? A. That's right.

Q. And along with the money, I believe you said there were some collection sheets; is that right? A. That's right.

Q. Are you familiar with the setup at the union hall here in St. Louis? A. No, sir, I'm not.

Q. Is this where you would take the money? [773] A. I would take them in there in an envelope and leave them. How they processed them, I mean that is none of my business.

Q. Would you take them to the Voluntary office here in St. Louis? A. Yes.

Q. You would just leave them there with your name on them? A. As a rule, I would give them to Eddy Beck when I come in.

Q. Who was Mr. Beck? A. He was working in the office there.

Q. In the Voluntary Fund Office? A. Yes.

Q. I see. Now, you indicated there was one time that there was a contribution to a Girl Scout group that you know of? A. Yes, sir.

Q. Did this Fund make any contribution to the hospital down at Cape Girardeau that you know of? A. Not that I know of. I mean I don't—it could have, I mean, but I don't know of any.

Q. I see. Now, when you signed this Voluntary Card, did you contribute to the Fund after that? A. Yes, sir.

[774] Q. How long have you been contributing to this Fund, Mr. Seeck? A. As long as it's been in effect.

Q. Could you give us an approximate idea how long that might be? A. No, sir, I honestly couldn't. It's been several years that we have had our fund, but I couldn't give you dates.

Q. Did you contribute to the Fund prior to the time that you worked as either foreman or general foreman? A. I have been a foreman or general foreman for twenty years.

Q. Did anyone tell you you had to contribute to the Fund? A. No, sir.

Q. Did Mr. Callahan, or Mr. Lawler, or Mr. Seaton ever tell you? A. No, sir. I'm too Dutch to be told to do anything.

Q. Did anyone tell you that you should tell these men working under you that they had to contribute to the Fund? A. No, sir.

Cross-Examination.

By Mr. Randall:

Q. Sir, what is your politics? Are you Republican or a Democrat? [775] A. I am neither. I vote for the man I believe is the best one.

Q. Independent then? A. That's right.

Q. Did you attend any of the political meetings that were held at the Electrician's hall? A. One or two, but being out of town, I couldn't get in to a lot of them, but I did attend one or two of them.

Q. Were any candidates present at any of those meetings? A. They were, but who they were, I couldn't tell you any more. I mean that's been a good while ago.

Q. They were candidates there, but you don't recall? A. Yes.

Q. Did you get a notice of those political meetings? A. Yes.

Q. Did you receive notices of other political meetings that you were unable to attend because of your absence from the City? A. Well, a lot of stuff comes in to the house, and my wife knows I can't go. She just throws them out. A lot of things just get thrown in the waste can because she knows I can't attend them.

Q. Where is your home? A. In Affton.

[77[illegible] Q. It is over in Affton. Did you ever refuse to employ anyone because of his giving or failing to give to the Political Fund, the Voluntary Fund? A. No, sir.

Q. Did anyone ever tell you to do that? A. No, sir.

Mr. Randall: That's all, Your Honor.

The Court: Anybody else?

Mr. London: No, Your Honor.

Redirect Examination.

By Mr. Riddle:

Q. Sir, do you employ these people yourself, or do you call the union hall and they send them out to you, or just—— A. No. I call the hall when I need men, qualified men.

Q. Do you take the people that they send you? A. Yes, sir.

Q. So you really don't have anything to do with selecting the crews that work under you? A. Yes, sir, sometimes I do. If I hear of a job that is coming down, and there's some good men on that, I call about—I call and ask if I can have those men.

Q. And if they say you can, you get them? A. Yes.

Q. If they say you can't, you don't get them? [777] A. They may have someplace else that needs them more than I do. Certain men are qualified in different phases of our work.

Q. Now, when there are layoffs, who makes the decision as to what person is laid off? A. Well, as a rule, I'll call and tell them I am going to have a layoff, and ask if there is any special men that they need in a certain job someplace. And if they need those men, I'll lay them off. Otherwise I will lay off whoever that I see that I can do without best because of the qualifications of the men.

Q. All right. But frequently and often they will tell you which men to lay off, or which men to transfer? A. Frequently, yes.

Q. You say that you brought these funds and this check list—what do you call that? A check list? A. What is that?

Q. The form that you hand in with your money? A. I call it a contribution sheet. I have never called it anything.

Q. You hand that in to the office? A. That's correct.

Q. Who are you handing it in to now? The last time that you were there? A. Well, the last four or five times it has been taken [778] in, my wife took it in for me.

Q. Do you know who she handed it in to? A. No. I'd have to ask her, but it just so happened I couldn't get in, so she gave—I gave it to her, and she took it in on Monday morning.

Q. Did you put your own contribution in with the others? A. Yes, I did.

Q. And your contribution, I am talking about yours now, not the others. A. Yes.

Q. Your contribution is always at the rate fixed for regular members of 562? A. 562; that's correct.

Q. Have you ever contributed yourself more than 50 cents? A. You mean for an 8-hour period?

Q. Yes, since 50 cents has been the rate? A. Right.

Q. You have not, or you have contributed? A. No.

Q. All right. When the rate was a dollar a day, did you ever contribute anything more than that? A. No.

Q. Anything less than that? A. No.

[779] Q. Was 50 cents a day—Did you ever contribute anything less than 50 cents? A. Not unless I worked less than eight hours.

Q. Yes. Now, on occasions you testified that you turned in your money and your sheets to—or your sheet, to Eddy Beck? A. That's correct.

Q. Who else have you handed this money in to down there at the hall? A. That's been about the only one that I can say I handed it in to. It was always in an envelope marked for him. It was in a sealed envelope marked Eddy Beck Voluntary Fund.

Q. If he wasn't there, who did you give it to? A. I can't say that I remember him not being there.

Q. Do you know Beans Burke? A. Yes.

Q. Have you ever given him this envelope? A. No, I can't say that I have.

Q. Mr. Steska? A. Once or twice I gave it to Ed to hand to Ed, because it might have been——

The Court: Do you want to straighten that out? Do you want to start over?

The Witness: Well, I am just trying to remember. I [780] mean this is something that——

The Court: Well, you said Ed to Ed. That is the point I am making.

The Witness: Oh. Ed.

Q. (By Mr. Riddle) Ed Steska? A. Eddy. I said sometimes, once or twice, I may have given it to Ed, Ed Steska, when Eddy Beck was maybe in the men's room, or something, and I had to leave.

Q. I see. Sir, you were asked to identify the contribution card that you signed on January 11, 1963. Sir, does that refresh your recollection as to when you started calling this a Voluntary Fund rather than an assessment? Is that about the time? A. No, sir. I can honestly say that it doesn't. If I said yes or no, I'd be lying either way, because I don't remember.

Q. I see. Well, prior to the time that you signed this card, this Voluntary Political Fund card, did you refer to

this same payment as an assessment? A. Years ago, I did; yes.

Q. The same money collected the same way? A. Yes. I mean whether it was right or wrong, I don't know, but that is what I have referred to it as.

Q. It is your recollection that since January 11th of '63 you referred the same collections—— [781] A. I can't specifically say that that is the date. No, I can't do that.

Q. All right. All right, sir. Sir, what would be the occasion for you going by the local hall down at Cape Girardeau to pick up money? A. Well, R. G. and I are very good friends. We keep our—we used to keep our ponies at the same stable. We are just real good friends. I go a lot of times just to talk to him.

Q. And pick up monies while you are there? A. Yes, that's right, and maybe once a week, or maybe once a month, or once in three months.

Q. Would this be money collected by him off of another job? A. He had nothing to do with collecting any money off my job.

Q. This money that you picked up at the local hall down at Cape, where did it come from? A. I have no idea. I don't know. It is in a sealed envelope. I took the envelope in. Where it came from, I don't know.

Q. Sir, could we limit it to this extent? Would it have been money from off of one of your jobs? A. No, sir. It was not anything from my job.

Q. It would be from another job down in that area? [782] A. I guess so. I don't know.

Q. All right, sir. Whatever money that you collected down there at the hall, or picked up there at the hall, I take it that you turned it in to the hall here in St. Louis? A. Yes, I did right along with the envelope, same as mine.

Q. Sir, did you ever give any of the people down at Cape a receipt for the money that you collected from them? A. No, sir.

Q. Anybody ever ask you for a receipt? A. No, sir.

Mr. Riddle: I have nothing further.

Recross-Examination.

By Mr. Randall:

Q. Sir, you referred to R. G. Who is R. G.? A. R. G. Davis.

Q. Who is he? A. He is business agent for Local 318.

Mr. Randall: That is all.

Mr. London: Nothing else.

The Court: Anything further?

Mr. Riddle: Nothing further, Your Honor.

The Court: All right. Step down. Call your next witness.

(Witness excused.)

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[783] **MRS. CHESTER SARFF,**

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Ma'am, would you state your full name for the Court and jury please? A. Mrs. Chester Sarff.

Q. How do you spell your last name? A. S-a-r-f-f.

Q. Do you live in Cape Girardeau? A. Yes, sir.

Q. And for whom are you employed? A. Local 318, Plumbers and Steamfitters.

Q. How long have you been employed there? A. Five years.

Q. What are your duties, ma'am? A. Secretary, and do some bookkeeping.

Q. All right. Are you acquainted with the men or members of your local there in Cape? A. Yes, sir.

Q. Ma'am, in connection with your position there with Local 318, have you had occasion to receive envelopes with money in it from members of your Local 318? That is money that you understood was to be handed over to 562? [784] A. Well, I think that would be mostly members of 562; some of ours too.

Q. Ma'am? A. Some of ours too, a few who worked on St. Louis jobs.

Q. Who have done what, ma'am? A. Who worked on St. Louis jobs in Cape Girardeau.

Q. All right. By that, do you mean that—on occasion some of your members who work on jobs that are under 562's jurisdiction in Cape Girardeau? A. Yes, sir.

Q. Leave money with you in your office? A. Yes, sir.

Q. All right. What is the most recent time or occasion when such money as that was left with you? A. It was during the last month.

Q. During the last month, do you remember the name of the people or your members who left money with you? A. I think Kenneth Ellison, and I think Bill Harshaw.

Q. All right. Had any of those gentlemen left money with you before like this? A. Kenneth Ellison had.

Q. Do you know what job he was working on? A. No.

Q. All right. Ma'am, when he left the money with you, [785] did he give you any instructions as to what to do with it?

Mr. Daly: I object to this as being hearsay, Your Honor.

The Court: What the instructions might be. The question whether or not he did give her instructions is not hearsay. Don't say what he told you. Just did he tell you what to do with the money?

The Witness: He asked me——

The Court: No. Just say did he tell you what to do. Answer yes or no.

The Witness: Yes.

Q. (By Mr. Riddle) All right. And what did you do with the money? A. Well, it varies. I either mail it to St. Louis in an envelope, or hand it to the man that was here just before me.

Q. Did you ever hand any of this money to Mr. Ed Steska? A. Yes.

Q. Do you know who Mr. Steska is? A. Yes.

Q. Who is he? A. He is a representative of 562. I don't know his title.

Q. All right. Have you handed money to him, money of this nature that you have just described, on a number of [786] occasions? A. Several.

Q. This time that you gave it to him, did you make any expanation as to what it was? A. No.

Q. You say this money is in an envelope. Does it have a label on it, or is it addressed to someone? A. I would put his name on there.

Q. You would put the name of—— A. Mr. Steska's name on there, and then inside the envelope there would be a slip with, you know, each amount of money for whoever turned it in.

Q. All right. Well, ma'am, are you testifying that on occasion there would be more than one of your members leave money and you'd put it all together in one envelope, and then mail it in? A. Yes, sir.

Q. Ma'am, can you tell the Court and jury what the dues are for members of 318? A. Yes, sir.

Q. What are they? A. Their monthly dues are $6.25 per month. We have a death benefit of $5.00 a year on each member, and we have a working assessment of $1.00 per day.

[787] Q. You have a work assessment of $1.00 per day? A. Yes.

Q. Monthly dues of $6.25? A. Yes.

Q. And each year they pay $5.00? A. Five dollars into a death benefit fund.

Q. Any other dues or assessments that your members pay to your office? A. Only when a member dies, then they are assessed about $7.00 per member for the death.

Q. Yes, ma'am. Ma'am, on occasions do your members gather or congregate around your hall and converse and talk? A. Yes.

Q. Ma'am, are you familiar with the term "doby"? A. Yes.

Q. Tell the Court and jury what a doby is? A. It is this working assessment that is paid for each day that they work, and that is a nickname. It is doby.

Q. Each day that they work on what kind of a job? A. Well, if they are a member and they are working, each day they work they pay $1.00.

Q. All right. What about the doby they pay each day they work on a 562 job? Do you know what that is?

Mr. London: I object to the form of the question. [788] There has been no testimony from this witness that she has any knowledge of that.

Mr. Randall: Vague and uncertain.

The Court: Well, I'll sustain the objection. You can go around it another way.

Q. (By Mr. Riddle) Ma'am, do you know what your members pay per day when they are working on a 562 job around Cape Girardeau?

Mr. London: I will object to that, Your Honor; calling for hearsay on the part of this witness.

Mr. Riddle: I will ask her if she knows.

The Court: The objection will be overruled.

Mr. Riddle: You may answer.

The Witness: Well, there is nothing to go by. I just take what they hand me, and I put it in the envelope, and I send it either to St. Louis, or it is picked up.

Q. What do you put in the envelope besides the money? Is there anything else? A. Slip of paper with the name and how much money each man gave me.

Q. All right. Now, ma'am, when you receive this, can you tell how much they are paying per hour, or per day, or per week? A. They don't tell me.

[789] Q. Can you tell by looking at the amount, plus the other figures that are in the envelope or that are handed to you? A. Well, they usually just give me the money they want me to hand on, and have asked me to do that, and I pass it on. I don't keep any record of it.

Q. All right. Well, ma'am, let me ask you this question then, and answer it if you can. Are you acquainted with the fact that members of Cape Girardeau Local 318 pay money for working on a St. Louis controlled job in addition to your dues and assessments?

Mr. Randall: Your Honor, I object to it as being leading and suggestive.

The Court: Well, it is leading and suggestive. I will sustain it for that reason.

Q. (By Mr. Riddle) All right. Ma'am, do you know whether or not your members who work on a St. Louis controlled job in Cape Girardeau, pay an amount each day or each week that they work on a St. Louis controlled job? Do you know that?

Mr. London: Same objection, Your Honor.

The Court: Be overruled.

The Witness: Do you want me to answer that?

Mr. Riddle: Yes.

A. Well, it is money for St. Louis that they bring to me. [790] Q. (By Mr. Riddle) All right. Now, then the question is do you know how much it is per day? A. It is not paid to me that way. It is paid to me in a sum of money. Each man gives me a sum of money.

Q. All right. Now, the amount of money that is handed to you, do you know whether or not this is referred to by your members as a doby? A. All they have ever told me, it is St. Louis money, and I should hand it or give it to them, if I would. I do it as a favor to them. They can't get it up there theirself.

Q. All right. Now, you mentioned a few minutes ago that you are familiar with the term "doby"? A. Yes, sir.

Q. How have you heard that term used by your members down there at the hall? A. That is their nickname for their assessment of a dollar a day. They call it their doby.

Q. Has this been used ever since by your members, ever since you have been down there in the office? A. Yes. It was voted in before I came there.

Q. I know, but is the assessment known as a doby? A. Yes, sir.

Q. By your members? A. Yes.

[791] Q. You heard it the first day or week that you worked there? A. Yes.

Q. And you have heard it almost daily and weekly ever since? A. Yes. Its used.

Q. Yes. Well, ma'am, with reference to the dues that you collect from your members, how do you receive that money when they are working on a St. Louis controlled job? A. Their monthly dues?

Q. Yes. A. Well, they pay that monthly dues every month up until June, each man paid his own dues, and since that time they are deducted by their employer and paid to me.

Q. Paid directly to you? A. Yes, sir. About once a month. I think it comes in that way.

Q. Well, ma'am, are you familiar with a card that's been referred to during the course of this trial as a Voluntary Contribution Agreement? A. You mean for our local?

Q. No. For any local? A. We don't have any.

Q. Well, let me show you a copy of what I am speaking [792] of, and see if that is a familiar card or document to you? A. I think I have seen those. I don't have any.

Q. All right. A. I think I have seen them.

Q. Have you seen any around your office? A. Mr. Davis might have some. I don't have any.

Q. You don't keep them in your normal—— A. I know I don't have them in my supplies; no, sir.

Q. Have you seen them in Mr. Davis' possession? A. I think so.

Q. Do you know what use he makes of them? A. No.

Q. All right. Have you ever seen any of your members sign such a card in your office, or in your hall? A. No, I have not.

Q. Ma'am, are you familiar with a vehicle or an instrument known as a travel card? A. Yes.

Q. How is it used by you in your local? A. We don't have—we don't use it very much. If a member would like to travel into another local and work there, and his dues and assessments are paid, we can issue him a travel card.

Q. Do you issue travel cards when your members work on [793] a St. Louis controlled job? A. No.

Q. What about a job out of Memphis, or Louisville, or Nashville, Murphysboro? A. Yes. If they want to work in those locals, they have a travel card. We issue those.

Q. All right. Now, procedurally, how is the travel card handled? Do you, yourself, write it out and give it to your members? A. I do. If Mr. Davis tells me that it is all right to issue a travel card to the member, then I do.

Q. After you issue it to one of your members, what do you next hear from that card? A. Its made in two parts, and it is perforated. They tear off the one part, and it comes back to our office.

Q. When you say somebody tears something off, who tears it off? A. It should be the business manager, or possibly his secretary in the union that they drop the card in.

Q. Suppose one of your members went to Memphis, Tennessee, to work, and he presented this card to their business manager. He would tear off the one part and send it back to you? A. It comes back; yes, sir.

Q. And this would let you know that your man is working [794] down there with a travel card? A. Yes.

Mr. Riddle: I have nothing further of this witness.

Cross-Examination.

By Mr. London:

Q. Mrs. Sarff, you indicated to Mr. Riddle that on occasion some of your members have given you money to be turned in to 562; is that correct? A. Yes, sir, that's right.

Q. Would this be on occasions after they have been working on a 562 job that has been shut down, or after they had been laid off, or something of that nature, they were no longer connected with the 562 job? A. They don't tell me. They just haven't been able to take this money in. They ask me to forward it.

Q. Do you make any effort to collect this money from them? A. I do not.

Q. Do you go to them and ask them for this money? A. I do not.

Q. Do you go to them and tell them that they owe this money? A. No.

Q. Do you go to them and tell them in any way, shape [795] or form that they must pay this money? A. No, sir.

Q. Do these men come in to you voluntarily and give the money and ask that it be sent on to St. Louis? A. They do.

The Court: Is that all? Anybody else?

Cross-Examination.

By Mr. Randall:

Q. Mrs. Sarff, since this money has been given to you, not only by members of Local 318, but also by members of Local 562, is that correct? A. Yes, sir.

Q. Did Mr. Davis ever give you any money? A. From whom?

Q. To send up to 562? A. Well, if he did, it would be money that was handed to him from these same people that he saw maybe out on the job, or somewhere like that.

Q. Well, hasn't Mr. Davis also worked on 562 jobs? A. Well, he doesn't work on jobs.

Q. Not since you have been there, he hasn't worked on jobs? A. No, sir.

Q. I see. He has never gone out and worked on jobs. [796] How long have you been there? A. Five years August 12th, this year.

Q. Well, during this period of time, the five years, has he ever acted as a steward for Local 562 on some of their jobs? A. No, sir.

Q. He has not. That's all.

The Court: Anybody else?

Mr. Nangle: No questions.

Mr. Daly: No, Your Honor.

Mr. Riddle: I don't believe we have anything else.

The Court: All right. Thank you. Step down. Call your next witness.

(Witness excused.)

JIMMY G. HENDRICKSON,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, would you state your full name? A. Jimmy G. Hendrickson. Gleason Hendrickson.

Q. Are you presently living in Kansas City, Missouri? A. Yes, sir.

Q. What is your occupation? [797] A. At the present, I am with Panhandle Eastern Pipe Line Company.

Q. And what job are you working now? A. Well, we have three compressor stations that we are building. One is at Olpe, Kansas; the other one is at Louisburg, Kansas, and then at Houstonia, Missouri.

Q. Houstonia. Sir, are you a member of a local pipefitters union? A. Yes.

Q. And what local do you belong to, and what is its number? A. Local Union No. 798.

Q. In Tulsa, Oklahoma? A. Tulsa, Oklahoma; yes.

Q. How long have you been a member of that union? A. I first joined as an apprentice in 1957.

Q. Approximately how long did you stay as an apprentice? A. Approximately four and a half years.

Q. So about 1961 or 2, you became a journeyman; is that what you call it? A. Yes.

Q. Sir, have you had occasion to work on a job under the control or jurisdiction of Local 562 in St. Louis, the Pipefitters Union? [798] A. Yes.

Q. More than one job, or just one job? A. One job.

Q. Where was that job, sir? A. At Centralia, Missouri.

Q. Do you recall the date? A. From July '67 to November '67.

Q. All right. Sir, had you worked on jobs before, other than 798? That is, when you traveled around over the country? A. Yes, sir.

Q. Are you familiar with the travel card provision that's in the United Constitution? A. Yes, sir.

Q. What other jobs have you worked on outside of 798 jobs and St. Louis 562 jobs in Centralia? A. There is the Kansas City local. I don't remember the numbers of these locals.

Q. All right. A. The Springfield, Illinois, local; the Columbia, Missouri, local; and Des Moines, Iowa.

Q. All right, sir. On each of those jobs, did you obtain a travel card? A. Yes, sir.

Q. And is the rate you pay on a travel card for working [799] out of another local's job, $8.00 per month? A. Yes.

Q. That's fixed by the United—— A. Association; yes, sir.

Q. Now, on these other jobs, have you paid anything else to the local union, that is, the local union at Kansas City, Springfield, Columbia, Des Moines, other than the $8.00? A. Well, there's a dollar per month, and I'm not sure what that's for. It is something to do with the United Association. It is a building trades—well, I am just not sure what it is for, but there is a dollar per month, but as I understand it, this is for all members.

Q. All right. It is a dollar per month in addition to the $8.00 travel card? A. Yes.

Q. In all of those other locals, have you ever paid anything more than the $8.00 travel card and the $1.00? A. No, sir.

Q. Sir, how are you assigned to the job at Centralia? Just how did you get there? A. You mean who hired me?

Q. Yes. A. The contractor hired me.

Q. Well, but what union, or who sent you up there, or [800] how did you get employed? A. Well, I happen to know the superintendent that was on the job, and I called him, and he hired me after checking with the Union 562.

Q. All right. Who was the superintendent? What was his name? A. Joe Burns.

Q. Joe Burns? A. Yes.

Q. All right. He was the superintendent on the job? A. Right. He was the superintendent of the contractor, which was Hux-Bohannon Construction Company.

Q. Was Joe Burns a member of 562? A. No, sir. He was from Kansas City.

Q. All right. To your knowledge, did he check with the union here, 562, for clearance for you to work? A. As far as I know. Now, this is what I was told; yes.

Q. All right. Sir, who was the first—strike that. At the time that you talked to Mr. Joe Burns, the foreman,—— A. Superintendent.

Q. ——superintendent, was anything said to you about any Voluntary Fund or contribution?

Mr. Daly: I am going to object to that, Your Honor, as being hearsay.

[801] The Court: I will sustain it as to that.

Q. (By Mr. Riddle) All right, sir. Well, sir, when did you first hear about a voluntarly contribution card or arrangements, if you ever heard about one? A. When it first came in existence. When that was, '63, '64, I'm not sure when it first—maybe '65. I'm not sure.

Q. Well, when was the first called to your attention when you went to the job at Centralia? A. About a week after I arrived and started to work.

Q. All right. And did someone talk to you about it? A. Yes. Mr. Robert Johnson.

Q. Mr. Robert Johnson. And who is Mr. Robert Johnson? A. He was the pipefitting foreman on this job.

Q. Was he the steward? A. Yes.

Q. The steward from the union came and talked to you? A. Yes, sir.

Q. What did he say to you?

Mr. Daly: I am going to object to this, Your Honor, as being hearsay.

Mr. Riddle: If it please the Court, this is the steward of the union. I believe the evidence is abundant stewards speak for the union out on the job.

[802] The Court: All right. The objection will be overruled.

The Witness: Well, he presented this card to me and showed it to me, and, of course, I knew about it, and so I signed the card. He explained to me though that it was a voluntary contribution. He said that I did not have to pay it if I didn't want to. He stressed that everybody else there was paying it, so the reason that I went ahead and signed it was that since the other members of the job, the pipefitters, the welders were paying it, I decided to go ahead and pay it myself.

Q. Did you want to pay the amount? A. Did I want to?

Q. Yes. Put it this way. Would you have preferred not to have had to pay it? A. Yes, I would have preferred not to have paid it.

Q. Why then did you go ahead and pay it? A. Because, as a courtesy, I was a guest of this union. I was working in their jurisdiction, and as a courtesy to them I went ahead and paid it.

Q. All right, sir. Now, sir, did you make cash payments to this steward? A. Yes, sir.

Q. Throughout the period of time you worked there? A. Yes, sir.

[803] Q. How much did you pay per day? A. Per day?

Q. Yes. I paid 25 cents per hour for the first eight hours. Then overtime, for every hour after eight hours, I paid 50 cents.

Q. All right. Do you recall about what it came to per week that you paid? A. Well, we were working on a 50-hour week, so this would have been approximately $15.00.

Q. Each week? A. Each week; yes, sir.

Q. That you were there. Sir, in addition to this $15.00 per week that you were paying, were you paying dues and assessments back to your local in Tulsa, 798? A. Yes, sir. I have a $10.00 per month stamp which we pay.

Q. You were paying that $10.00 in addition to your—that is $10.00—— A. Per month.

Q. Per month. And did you pay anything else to your local union back in Tulsa besides the $10.00 a month? A. No, sir.

Q. No assessments? A. Well, this is an assessment. This $10.00 a month is [804] the stamp assessment. Part of this goes to the local, and part to the United Association.

Q. I see. Sir, did anybody, well, specifically, did the steward, Mr, Robert Johnson, tell you what purpose your money would be used for? A. Well, not really. No. I assumed myself what it was used for, well, the same as they use the COPE for, for political funds.

Q. Now, sir, were you asked about how long you wanted to contribute? How long you wanted to pay in? A. No, sir.

Q. Did you pay for as long as you worked? A. Yes.

Q. Sir, while you were working on this job, do you know whether or not there were people working on that particular project who were members of 562? A. No, sir.

Q. You don't know that. You don't know. A. Would you repeat the question.

Q. You were working on this Centralia job, and you were an out-of-towner, or a foreign member. Do you know whether or not there was any 562 people working on this job? A. Not to my knowledge, there was not.

Q. They were all non-562 members? [805] A. Yes, sir, this is right.

Q. Do you know whether they all paid this $10.00, or the same amount you paid? A. Well, I didn't see—every week I didn't see all the members give the steward the contribution, but during a period of time of the job, I did see them all give him some money; yes.

Q. All right, sir. Did you ever get a receipt for any of the money you paid them? A. No, sir.

Q. Did you ever ask for one? A. No, sir.

Q. Why didn't you ask for one? A. Well, it was a contribution to a political fund, and it was, I couldn't use it for any reason. It was—I couldn't use it for income tax purposes, so there wasn't really any reason to have one.

Q. All right, Sir, let me ask you this. Did you feel any pressure to contribute to this in order to get the job, or stay on the job? A. No, sir. There was no pressure. In fact, the only one that ever talked to me was the first day, or a week, or thereabouts when the steward, Mr. Johnson, came by and gave me the card to sign.

[806] Q. Sir, you testified that you would have preferred not have paid any money in? A. That's right.

Q. I'd like you to tell the Court and jury why you continued to pay then, even though you didn't want to? A. Well, as I said—I think you asked this just a few minutes ago—that why did I? Well, this is like being a guest in your home, or anybody else's home or being in a different territory. That as a guest, and all the members on this job were guests of 562, that they paid this, and so consequently I went ahead and paid it too. I might add that I said that I had never worked in a 562 jurisdiction before, and this is true I have never worked under their jurisdiction, but in 1966 I worked for a contractor out of Oklahoma, and we were laying loop lines. This is where we leapfrog along the pipe line, and we started at Warrensburg, Missouri, and we went in to Columbia, Missouri. After we started at Warrensburg, we went to Columbia, Missouri. Well, this is supposedly 562's jurisdiction, and so most of the members were out-of-towners. They got together and they said that they wasn't going to pay this political fund. Well, we told the steward this. The steward was a member of the Kansas City local, and the morning that we arrived at Columbia, Missouri, he went in to the contractor's office and made a phone call.

What he [807] said, if we was going to have to pay it that we wasn't going to stay on the job. Well, we went in. When the steward came back he said that he had called somebody in St. Louis. I don't know who this somebody was, but he did say, and this somebody said just to forget it, that we wouldn't have to pay into this political fund. And so this was the one time that I know of that they said, well, it was only voluntary; that we could; if we didn't want to pay into it, why then we didn't have to.

Q. But the steward on the job made a call in to St. Louis? A. St. Louis; yes, sir.

Q. To get clearance so that he could exempt you on that job?

Mr. London: Objection to the form of that question, Your Honor. That is assuming something that he didn't testify to.

The Court: Be sustained.

Q. (By Mr. Riddle) Pardon me, sir?

The Witness: Yes, sir.

Mr. London: May I ask that that be stricken. I understood that the objection was sustained.

The Court: I sustained the objection.

Mr. London: I ask that the answer be stricken.

[808] The Court: The answer will be stricken.

Q. (By Mr. Riddle) How long did you work on that job without paying into the Fund at Columbia? A. We never paid into the Fund.

Q. How long did you work on it? A. How long on the job?

Q. Yes, on that one. A. Well, then it was into Oklahoma. We finished at Columbia, then we went to Louisiana, Mis-

souri, and crossed into Illinois. We was in a different local. I don't remember what local that was, but then after we finished at Louisiana, Missouri, then we went to Springfield, Illinois.

Q. All right. How long were you working on that job under 562's jurisdiction? A. We wasn't working under 562's jurisdiction.

Q. I am talking at the time when you didn't pay? A. We wasn't working under—the whole time we worked under the Kansas City local's jurisdiction. In other words, now, Kansas City has a jurisdiction all the way through. Now, how this was done, I do not know.

Q. Well, sir, let me get this clarified as best I can. Where were you when this event occurred when several of you said that you would not pay into the Fund? A. At Warrensburg, Missouri.

[809] Q. At Warrensburg? A. Right.

Q. All right. Now, who did you tell that to? A. I don't remember. It was the steward, and I do not remember his name, but it was a steward from Kansas City.

Q. A steward from Kansas City? A. Right.

Q. All right, sir. Now, then, what fund were you fellows talking about? The St. Louis fund? A. Well, we was going into Columbia, Missouri, which they told us that 562 would have the jurisdiction. Now, there was—so 562 said, well, Kansas City can man this job all the way through to the Mississippi River at Louisiana, Missouri.

Q. Then 562 didn't make any further effort to collect from you fellows? A. No, sir.

Q. How many of you fellows were there together when the collection effort was made? A. There was never a collection effort made.

Q. All right. Just tell the Court and jury what happened. What preceded the decision that none of you would pay?

A. Well, we heard that St. Louis was going to have this jurisdiction. This is what the Kansas City local told us.

Q. All right. And so when we went to Columbia, Missouri; [810] why then 562 was supposed to have sent a man to, I mean a representative of that local, but for some reason he didn't show up that morning. Well, then that is where—the thing was that we was going to tell the representative from 562 that they wasn't going to pay into it, and when he didn't show up, why we told the steward from Kansas City, and, really, his idea was to make the phone call to find out where the representative from 562 local was, why he hadn't showed up that morning. And that is when they found out that Kansas City—that is when the steward found out that Kansas City was going to have the jurisdiction all the way through.

Q. Then St. Louis 562 never had jurisdiction over this job? A. No, sir.

Q. All right. How many of you were together up there that said that you weren't going to pay into the Fund? A. There was approximately ten or twelve; maybe even fifteen. I don't remember.

Q. Was this the first time that you had ever run into this so-called Voluntary Fund in your travels? A. Yes, sir. I hadn't heard about it, but—that isn't the first I had heard about it, but that is the first time I had ever run into it.

Q. Is it pretty widely known all over the country? [811] A. Of the Voluntary Fund? Yes, sir.

Q. And the amount that it costs to work on their jobs? A. Well, I really didn't know until I went to Centralia, how much it was.

Q. That is the first time you found out how much it was? A. How much that the members were contributing.

Mr. Riddle: I have nothing further of this witness.

The Court: Any questions.

Mr. Randall: Yes. We'd like to request his grand jury testimony, Your Honor.

The Court: All right.

(Mr. Riddle handed document to Mr. Randall.)

The Court: No statement?

Mr. Riddle: Please the Court, we'd like the record to indicate that we have given them the grand jury testimony.

The Court: Yes, the record will show that, and that there is no statement.

(Defense counsel looked at transcript.)

Cross-Examination.

By Mr. Randall:

Q. Mr. Hendrickson, as I understand your testimony, at some point you were moving into the Columbia area and into the jurisdiction of Local 562? A. As we understood our instructions, that when we went [812] to this job, and we are speaking of 1966, this was approximately, oh, July of '66, or, yes, July of '66—I'm—this is when we started the job in Warrensburg, Missouri, and then we finished the small loop—loop lines are where they just run a small, say, from compressor station to compressor station, and then they leapfrog to another point in the pipe line system.

Q. And that you had some conversation concerning the Voluntary Political Fund among yourselves at that time; am I correct in that? A. That is right; yes, sir.

Q. And that a call was made to St. Louis, and you people were advised that it was purely voluntary? A. Yes, sir, this is right.

Q. And so even before you went to the Centralia job, you were aware that contributions were purely voluntary? A. I was told that at Centralia also.

Q. And on the Centralia job you talked to Mr. Johnson, the steward, who told you that it was purely voluntary? A. Yes, sir.

Q. But because the other people were paying into it, you thought that you ought to do it also? A. Yes, sir.

Q. Because of the fact that you felt that you were a [813] guest among these other people; is that correct? A. I was a guest of 562.

Q. And you thought you ought to pay simply because the others were doing so? A. Yes, sir.

Q. Now, you said that you understood that the purpose of this Voluntary Fund was the same as that of COPE. Do you remember making that statement? A. Yes, sir, I do.

Q. Now, would you tell us what COPE is, sir? A. COPE is a fund that is usually collected by the United Association, in which it is a political fund almost the same as—they use it in the lobbying methods in Washington to help get through labor legislation before Congress.

Q. And do they also use it to help elect people favorable to labor's positions? A. I'm not that familiar with it, but I'm sure they do; yes.

Q. But it is a political fund? A. Yes, sir, it is.

Q. A political fund contributed by members of labor unions? A. Yes, sir.

Q. And it is a voluntary fund? [814] A. Yes.

Q. Have you ever contributed to COPE? A. Yes, sir.

Q. Now, are you familiar with the requirement—Mr. Riddle asked you something about the National Association Constitution—Are you familiar with the requirement of that Constitution that if a travel card is accepted for a

certain period of time by a local, that is, another local, that they must admit him into membership of that local? Are you familiar with that provision? A. As I understand it, it's a year that they have got to hold the—and the travel card for one year in that local, and then the member can be accepted into that local; yes, sir.

Q. He must be transferred into the local after the local holds the travel card for a year, mustn't he? A. I'm not sure. I'm not that familiar, but as I understand it, he can be. If requested, he can be, but I am not sure that it says he must be.

Q. I see. But he can be transferred into the membership, can be transferred from one local to another? A. If it is held for a year; yes, sir.

Q. If it is held for a year. Now, as I understand it, while you were working under the jurisdiction of 562, you were paying your local its $15.00 a week; is that correct? [815] A. No, sir. I was volunteering to it.

Q. To your own local, I am talking about. What were you paying your own local? A. My own local was, I was paying $10.00 per month.

Q. $10.00 per month? A. Yes, sir.

Q. And nothing else? A. No, sir.

Q. And how much were you being paid on this job up at Centralia? A. I don't know.

Q. How much per hour? A. It was either five dollars sixty plus, or five dollars ninety. I think it was five dollars ninety plus. I'm not sure. They have different zones, and this has been a year, and I have forgot how much that I was being paid there.

Q. But it was five dollars ninety plus what? By plus, you mean plus the welfare? A. No. No, this isn't including the fringe benefits.

Q. It does not include the fringe benefits? A. No. I think it was five dollars ninety-three and a half.

Q. And that's for straight time? A. Yes, sir.

[816] Q. And what did you get for overtime? A. Double time.

Q. Double time? A. Yes, sir.

Q. And you were contributing to the Voluntary Fund 25 cents per hour for straight time and 50 cents when you were getting double pay; is that what you said? A. Yes, sir, I said that. That is what I was contributing.

Q. Now, Mr. Hendrickson, did anyone ever tell you that you must contribute to the Voluntary Fund in order to work? A. No, sir.

Q. Did you ever speak to Mr. Callanan, or Mr. Lawler, or Mr. Seaton, these defendants over here, at any time? A. I have never seen them.

Q. Never seen them before? That's all.

The Court: Anybody else?

Mr. Daly: I have one question.

Cross-Examination.

By Mr. Daly:

Q. Mr. Hendrickson, you indicated that the card was given to you by Mr. Johnson; is that correct? A. Yes, sir.

Q. Do you know whether or not he was a 562 man, or [817] whether he was out of the local at Kansas City? A. No, sir. He's a local—he's a member of the local union in Jefferson City.

Q. Jefferson City. He wasn't a 562 man; is that right? A. He was not.

Q. Were there any 562 men on the job at all? A. No, sir.

Mr. Daly: I have no further questions.

Mr. Randall: I have one question.

Cross-Examination.

By Mr. Randall:

Q. What is your politics? Are you a Republican or Democrat? A. I am a rescued Democrat.

The Court: Any redirect?

Mr. Riddle: Yes, Your Honor.

Redirect Examination.

By Mr. Riddle:

Q. Sir, do you know how long you would have worked on this job at Centralia if you hadn't contributed? A. No, sir, I don't.

Mr. Randall: Your Honor, I will object to that as calling for speculation.

Mr. Riddle: He's asked on cross-examination about [818] that.

The Court: I think he opened it up. Go ahead.

The Witness: I don't have any idea.

Q. (By Mr. Riddle) You didn't take any gamble with it, did you? A. No, sir. I need to work.

Q. As far as you knew, everybody was paying it, so you paid it? A. Yes, sir.

Q. Sir, when you were asked if you contributed to COPE—— A. Yes, sir.

Q. Have you? A. Yes, sir.

Q. How? A. Well, the steward comes by, he has a—sometimes they have a card. Sometimes they just have a list, and if you have $5.00 or $10.00 in your pocket, or a dollar, whatever you might have, usually you pull it out and pay it in cash, but that's——

Q. You just pay what you want to? A. Yes, sir.

Q. If it is a dollar, and you feel like paying, you give him a dollar? A. Yes, sir.

Q. If you feel like paying him $10.00, you give him $10.00? [819] A. That's right.

Q. Or whatever you want to give? A. Yes, sir.

Q. And this is true from one employee to the other? They pay whatever they want to? A. Yes, sir.

Q. About how many times in the last two or three years have you been asked to make such a contribution as that? A. Several. I don't remember how many times.

Q. Half a dozen? A. Perhaps; yes.

Q. Those COPE collections are not every Monday, are they? A. No, sir.

Q. And they aren't a fixed rate, are they? A. No, sir.

Q. And they never did come to as much as $15.00 a week, did they? A. No, sir.

Q. What is the most you ever paid to COPE under those conditions? A. $15.00.

Q. The most? A. $15.00 at one time.

[820] Q. Into COPE, a contribution? A. Yes.

Q. On other occasions, how much have you paid, just—— A. Oh, $5.00, usually. Once our union was having a drive for COPE, our local, and I paid in $15.00.

Q. And that $15.00, how often did you pay that? Once every two or three months or so? A. No.

Q. Once every year? A. Just—I paid——

Q. The one fifteen-dollar contribution? A. I paid—Our union, couple years or so ago, they was having a drive for COPE, and I gave a fifteen-dollar contribution.

Q. One fifteen-dollar contribution? A. Yes, sir.

Q. But, you made other contributions within lesser amounts? A. Yes, sir, but what the total is, I have no idea.

Q. And this contribution up at Centralia, you made, $15.00 each and every Monday morning? A. Well, if I worked fifty hours.

Q. Fifty hours? A. That's—And I don't even remember if it was [821] Monday morning or not.

Q. Yes. Now, on your contributions to COPE, was this based upon a certain amount per hour? A. No, sir.

Q. Entirely different from this, wasn't it? A. Yes

Q. But it was—Let me state that this was a voluntary fund that you were paying in to COPE? A. That I was paying in to COPE, and I was paying into the Voluntary Fund at 562.

Q. Yes, sir. A. I mean it was, as I understand it, it was being used for the same thing.

Q. Yes, sir. But you don't know whether you'd have worked at Centralia or not if you had to pay it, do you?

Mr. London: I am going to object to the form of that question, Your Honor.

The Court: It will be sustained.

Mr. Riddle: That is all I have.

Recross-Examination.

By Mr. London:

Q. You arrived at Centralia, you weren't approached with a Voluntary Fund——

The Court: He already answered that three times.

[822] Mr. London: He opened it up on redirect examination.

The Court: He said he didn't get it until he was there for a week. Now, it is still the same.

Q. (By Mr. London) Was it your understanding that this was a voluntary contribution? A. Yes, sir.

Q. To the 562 Political Voluntary Fund; is that correct? A. Yes, sir.

Mr. London: That's all.

The Court: Anybody else have any?

Mr. Riddle: Just one question.

Redirect Examination.

By Mr. Riddle:

Q. Are you familiar with the term "doby"? A. Doby is, they used to use that as the same as assessment.

Q. All right, sir. That is all.

The Court: Anybody else?

Mr. Daly: No, Your Honor.

The Court: We will adjourn until tomorrow morning at 9:00 o'clock. Members of the Jury, bear in mind the admonition I have given you heretofore in its entirety. You are excused.

(Witness excused.)

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[888] **THOMAS E. CONROY,**

being first duly sworn, testified in behalf of the Government as follows:

[889] **Direct Examination.**

By Mr. Riddle:

Q. Sir, would you state your full name? A. Thomas E. Conroy.

Q. And you are a resident of the St. Louis area? A. Yes, sir.

Q. How old are you? A. Forty-six.

Q. Are you a member of Pipefitters Local 562? A. I am.

Q. How long have you been a member of that local? A. Since February, 1942.

Q. Sir, are you presently a foreman? A. No, sir.

Q. Have you ever been a foreman? A. Yes.

Q. What period of time were you a foreman? A. At various times. I don't know, different jobs, maybe three months, maybe six months.

Q. Over this period of time since 1942, how many months or years have you totally out of that period been a foreman? Two or three years, or just your best estimate? A. Oh, maybe three years.

Q. All right. Sir, are you, at the present time, a [890] steward? A. No, sir.

Q. Have you, at any time in the past, been a steward? A. Yes, sir.

Q. Sir, referring to the Fisher Body job that was under construction in 19 and 63, were you a steward at that time? A. Yes, sir.

Q. Sir, over the past many years since 19 and 42, you have paid dues and assessments into your union? A. Yes, sir,

Q. Are you familiar with the term "assessment"? A. Yes.

Q. Do you know what it means? A. I think I do.

Q. What does assessments mean to you, sir? A. Well, assessment is something we agree to pay that is over and above our stamps which we pay monthly.

Q. Something you agree to pay to the union? A. Yes.

Q. Above your stamps? A. Yes.

Q. Now, by stamps, you mean by that your regular dues, regular monthly dues? A. Yes.

[891] Q. All right. At the present time, what are your stamps per month, using your phrase, terminology? A. Three dollars and a half a month.

Q. $3.50 per month? A. Yes.

Q. Sir, at the present time, what are your dues—I mean your assessments? A. Three and three quarter per cent.

Q. Three and three-quarter percent of your total paycheck for any given period? A. Yes.

Q. That would be your gross amount? Three and three quarters of the gross amount of your paycheck? A. Total, yes.

Q. All right, sir. Do you know a Mr. Gene Richardson? A. Who?

Q. Mr. Richardson, who is the foreman on the job at Fisher Body? A. Guy Richardson.

Q. Guy Richardson, yes, sir. Excuse me. Do you know Mr. Guy Richardson? A. Yes.

Q. Was he the foreman on the Fisher Body job that was under construction in 1963? [892] A. For Sheehan?

Q. Yes. A. Yes.

Q. Now, sir, during the period of time that you were on that job and acting as steward, did you make any collections of money from members of Local 562 who were working on that job? A. I did.

Q. And what were those collections for? A. The regular assessment and the Voluntary Fund.

Q. The regular assessment and the Voluntary Fund? A. That's right.

Q. Did you collect both the regular assessment and the Voluntary Fund? A. Yes.

Q. Now, sir, how did you go about collecting it? Did you do the collecting of both of them simultaneously? Well, let me rephrase that. Did you collect both of them from the workers at the same time? Did they pay you their regular assessment, and, as you say, the Voluntary Fund, at the same time? A. Yes.

Q. Were these payments made to you each week? A. Yes.

Q. And on what day of each week? [893] A. Usually Monday.

Q. All right, sir. Now, in connection with the collections, did you prepare a form showing the name of the people who paid and the amount they paid? A. Yes, I did.

Q. And you prepared this form each and every week? A. Which form are you talking about?

Q. I'm talking about the form now for this Voluntary Fund. A. Yes.

Q. All right. Now then, did you have another form that you prepared and filed in connection with the regular assessments? A. I did.

Q. Were these forms the same? A. No.

Q. How were they different? A. Let's see. That's five years ago. On one, I think it said Assessment 562 Local.

Q. And the other said—— A. Voluntary Fund, I believe, or something.

Q. Were they precisely the same, except for the heading on them? A. No. The columns on the lower part were a little [894] different.

Q. Do you remember in what respect they were different? A. It seems like the last two columns there was something different. I can't offhand remember.

Q. All right, sir. Now, in your collections that you received, will you tell the Court and jury whether or not you distributed the so-called Voluntary Contribution Cards to the people who were on that job? A. I did if they hadn't signed a card at a prior time.

Q. Anybody who hadn't prior to that time signed a card, you obtained a signature from those employees, or those workers? A. That's right.

Q. And at what place on the job did you perform this function? A. Well, various places on the job, depending on where the man reported, if the foreman was with me, and whether it was in the office, or if it was at a work bench.

Q. All right, sir. Now, did everyone who came on the job, talking about the Fisher Body job now at this time, did everyone who came on the job sign a card if they hadn't previously signed one? A. I believe so.

Q. How did you determine whether a person had previously [895] signed one? A. I asked him if he wished—when I presented the card, I asked him if he wished to sign a card to our Voluntary Fund, and if he said that he had already signed one, we never asked him to sign another one.

Q. You didn't pursue it any more? A. No.

Q. I see. Sir, when you were making these collections, did you make any difference in your approach to the collection of the Voluntary Fund and the regular union assessments? A. I don't think so.

Q. You collected them in the same way? A. Approximately. I mean I asked them if they wished to pay the Voluntary Fund.

Q. Now, sir, did you explain to them that there was a difference in the voluntary payments and in the amount of the regular assessments? A. I think they understood this when they signed the card, because any time I had a man sign the card, I asked him to please read it, and if he wished to sign it, to sign the card, and if he didn't wish to sign it, that was his own decision.

Q. Sir, at that time, did you understand that payments to the Voluntary Fund were assessments? [896] A. Well, can I sort of phrase or explain?

Q. Well, answer the question whether or not you considered them assessments, and then explain your answer,

if you would, please. A. Not officially, I wouldn't say assessment.

Q. Sir? A. Not officially.

Q. Well, what do you mean by officially? What about unofficially? A. Well, what I am trying to bring out is our interpretation, or I should say our meaning of the word. An attorney has one interpretation, which is a strict interpretation, and some of us fellows that our formal education is different and our meanings and our—actually, when we use a word it probably doesn't mean strictly what the attorney means by this word.

Q. Well, sir, I am not asking you about what an attorney might mean. I am asking you of your interpretation of the difference, if any, between the voluntary payments and the regular assessments into the Fund, or into the Union. A. Oh. One is voluntary, and one is——

Q. Mandatory? A. Well, I'd say that if you are a member of the Local, and you pay the assessment that you agreed to do so when you [897] joined the Union.

Q. Yes, sir. And this is what you understand an assessment to be? Something that you pay in order to join the Union? A. Oh, it came into effect after I joined the Union.

Q. The assessments? A. Let's see. I should say the amount changed. The percentage or per day changed after I joined the Union.

Q. Well, do you consider an assessment, in your interpretation, to be what you have to pay in order to join, as well as what you pay in order to stay a member?

Mr. London: Your Honor, I want to object to the form of the question, and also as to his interpretation would be irrelevant and immaterial, and would not be binding on these defendants.

Mr. Riddle: This man is a steward, Your Honor. He is out collecting these.

The Court: He may answer. It will be overruled.

The Witness: Would you rephrase that?

Mr. Riddle: Read the question back to him, please.

(Thereupon the reporter read the question as follows: "Well, do you consider an assessment, in your interpretation, to be what you have to pay in order to join, as well as what you pay in order to stay a member?")

[898] A. I guess your regular assessment. I'd say that.

Q. Sir? A. I'd say the regular assessment; yes.

Q. All right, sir. Now, sir, did you refer to the collections that you were making from the members into the Voluntary Fund as assessments when you were collecting the money from them? A. Did I refer to them——

Mr. London: Your Honor, may the record show a renewal of the previous objection?

The Court: All right. The record will show that you objected to this question, and the ruling will be the same.

Q. (By Mr. Riddle) Sir, did you refer to the collections that you were making into the Voluntary Fund as assessments at the time that you were collecting them from the members? A. I don't understand what you are trying to ask me. Are you trying to ask me that the Voluntary is the same as the assessment?

Q. Yes. That's another way to ask the question. What is your answer to that, sir? A. I don't think it is the same, because the amount varies and is different. One you are working on a percentage, and the other you are working per day.

Q. So the assessment for the Voluntary Fund is by the [899] hours and days; the assessments into the regular fund is based upon the gross amount of your check; is that what you are saying? A. That's right.

Q. But they are both assessments in your interpretation? A. No. One is voluntary, and one is an assessment.

Q. All right. Well, don't you refer to the payments into the Fund, into the Voluntary Fund, as assessments? A. I don't think I do.

Q. Have you ever, in the past? A. I may have. I mean I don't know, officially.

Q. What do you mean, officially? A. Well, I don't remember of ever referring to it other than maybe in a term that it's used that way.

Q. Sir, did you refer to the collections that you made into the Voluntary Fund as assessments on reports that you filed with the Union? A. I don't think I ever have.

Q. Well, now if you have referred to them as assessments, why would you have done that?

Mr. Randall: Your Honor, I am going to object to that question. It is argumentative.

Mr. Riddle: I'll withdraw that question.

The Court: All right.

[900] (Thereupon Government's Exhibits Nos. 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155 and 156 were marked by the reporter for the purpose of identification.)

Q. Sir, I will hand you what has heretofore been marked as Government's Exhibits 144 through 156, and ask you to examine them for a minute, if you would, please, and I want to ask you some questions about them.

You have just handed me what's been marked Exhibit No. 144. Before you continue, can you tell the Court and jury if that was prepared by you? A. It looks like my printing; yes, sir.

Q. Speak up a little louder, please. A. Yes, I said yes, it looks as if I printed it.

Q. Sir, can you tell the Court and jury whether or not you did? A. I think I did.

Q. You think you did? A. I'm almost positive I did.

Q. Almost positive you did? A. I am positive. Let me put it that way.

Q. All right. Look at the rest of them, please.

Sir, have you looked at each and every one of the exhibits that I have just handed to you? A. I did.

[901] Q. And did you prepare each and every one of them? A. I did.

Q. And all of the notations, and all of the entries on these various documents represented by these exhibits were in your handwriting? A. Or printing.

Q. Writing or printing? A. Yes, sir.

Q. But all entries that are entered were made by you? A. I believe so; yes, sir.

Q. You believe so? A. (Indicating yes) I did.

Q. All right, sir. Sir, looking at——

Mr. London: May we see the exhibit before the witness is questioned about it?

Mr. Riddle: Yes.

(Mr. Riddle handed exhibits to defense counsel.)

Mr. London: May we approach the bench, Your Honor?

The Court: Yes.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. London: If the Court please, if I can make an objection to the questioning with regards to these Exhibits [902] 144 through 156, to continue through these, I think it would save some time rather than repeating it.

I assume that Mr. Riddle is going to ask this witness concerning various entries on these exhibits, which the term "back assess" is indicated. Am I correct, Mr. Riddle?

Mr. Riddle: Yes, among other things.

Mr. London: May the record show that we object to any questioning along this line, on the grounds that this witness's interpretation, or his notations of his interpretation would be totally irrelevant and immaterial to the issues of this case; would in no way be binding upon the defendants; the fact that he might interpret something as an assessment would not in any way have any probative value towards any of the issues in this case, and as far as being binding on the defendants.

Also object on the grounds—strike that last part.

The same objections would go to the various other entries that were indicated, that there was any amounts owed or due, or words to that effect.

Mr. Riddle: Well, to which we say, Your Honor, that the critical issue in this case, of course, is whether or not the monies collected in this fashion and paid as contributions to federal candidates, whether that money is union funds or not. This is the critical issue, and if a steward representing the [903] Union, one of the defendants in this case, collects the money and labels it "assessments," and "back assessments," and files a report in the regular course of business with the Union, then nothing, in the Government's point of view, could be more material to that issue.

Mr. Daly: Let me say in argument to that, Your Honor, please, the steward in representing the local as one defendant has certain defined duties and authorities in this matter, and his representation is limited by the U. A, and also by the local, and when he does this for the Volun-

tary Fund, he is not acting as an agent for Local 562, nor for any of the other defendants.

The Court: Do you have something else you want to say?

Mr. Riddle: In addition to that, aside from what we have said previously, it would certainly be relevant to show this man's understanding of it, because he is, by the defendants' position in this case; a member of the Fund, his attitude and understanding of what he was paying and what he was collecting would be relevant, if for no other reason——

The Court: All right. I will overrule the objection.

Mr. London: May the record show, however, that it is continuing, so I don't have to keep interrupting Mr. Riddle?

The Court: Well, it will go to any——

[904] Mr. London: With regard to these exhibits?

The Court: And with regard to assessment or owed.

(Thereupon the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Now, sir, calling your attention to Government's Exhibit No. 144, I'll ask you to examine it and see how the first column to the right of the names that appear on there is headed. What is it styled? Or what is the heading of it? A. Well, it looks like back assessment.

Q. Well, who put "back assessments" on it? A. I did.

Q. Did you know as much at that time about what an assessment is as you do today? A. I believe——

Q. Answer my question yes or no. Then explain it, if you will, please. A. I thought I did at that time.

Q. Yes, sir. And, at that time, you thought these collections were assessments? A. No, sir.

Q. You just happened to call them assessments? A. That's right.

Q. Now, sir, going down that column under the heading [905] "Back Assessments"—— A. Yes, sir.

Q. Now, the first name on there is Mr. Anderson? A. That's right.

Q. Does he charge the back assessment for the week ending August 4, 1963? A. Back assessment. No, he didn't pay any back assessment, according to, or Voluntary.

Q. And none is charged? A. None is charged.

Q. The next man's name is Bernacchi? A. Yes.

Q. Does the record indicate a back assessment for him, or that any is charged to him? A. No, Voluntary.

Q. Sir? A. I say no, Voluntary.

Q. I am talking about the column headed "Back Assessment." Just refer to that, if you will. A. OK.

Q. The next man's name is Steinkamp? A. That's right.

Q. Is there any entry there showing back assessment? A. No.

[906] Q. The next man's name is Olivo. Any back assessment beside his name? A. No, sir.

Q. The next name is J. Menke. Now then, do you charge him with a back assessment? Sir? A. You are using the word "assessment".

Q. Well, do you charge him in the column that you set up yourself? A. Yes, sir. Thirty-two hours.

Q. Thirty-two hours. Back assessment. Does it appear in the column that you—— A. It does.

Q. Sir? A. It does.

Q. That means that he is thirty-two hours behind? Is that what you mean by adding that figure in his column? A. Well, it meant that either he didn't have any money to pay the previous week, for this was during the strike.

He could have been on picket and came back to the job or——

Q. But in any event, your notation of thirty-two hours back assessment was determined by you at that time? A. That's right.

Q. That means that he owed you that amount of money? Or owed that amount of money? [907] A. I don't know whether he owed it or not. If he signed the card and wished to pay it, I collected it. This was made out after the assessments was collected.

Q. Made out after the assessments were collected? A. Or the Voluntary Fund.

Q. Yes, sir. Now, you say assessments, Voluntary Fund. Do you use the names, or the words, interchangeably? Not only on the witness stand, but elsewhere? A. I'd say interpretation——

Q. I am asking you whether or not you use the word interchangeably, assessment and this Voluntary? A. Well, it appears I did when I made this column up.

Q. Well, it appears, sir, that you just did it on the witness stand. Now, my question is do you use the words interchangeably, often and frequently?

Mr. Randall: Your Honor, I am going to object to this as repetitive. These questions have been asked.

The Court: Be overruled. He may answer it.

Mr. Riddle: The Court says you may answer.

The Witness: I didn't think I did, but it appears that I did.

Q. Yes, sir. Now, the next man appearing on—well, the next two, they have no back assessments? A. That's right. [908] Q. Now, this fellow Buffa, does he have a back assessment? A. Thirty-two hours, according to the column.

Q. According to the column that you filled in? A. That's right.

Q. Now, what about Mr. Malone? What do you have about him? A. I can't actually make it out. It looks like fifty-three, and there is some symbol, plus seventy-two.

Q. His back assessment is seventy-two? A. It looks like fitfy-three plus something.

Q. Fifty-three plus seventy-two? A. That appears to be what is on here.

Q. All right, sir. How much money did he pay to you that day? A. Twenty-four dollars.

Q. Yes, sir. Now then, the next one on the list is Mr. Budde. Does he have a back assessment into the Voluntary Fund? A. According to this, he had forty hours.

Q. Forty hours; yes, sir. Now, sir, is that an exact and true copy of the form that you filed down at the hall? A. It probably is a photostat copy of the one that I filed at the hall.

[909] Q. This type of a report you file weekly, or at least during this time you did? A. During that time, yes, sir.

Mr. Riddle: If it please the Court, at this time the Government will offer into evidence its Exhibit No. 144, and ask that it be received.

The Court: All right. It will be received.

Mr. London: Our objection goes to the exhibit itself.

The Court: Be overruled.

(Whereupon Government's Exhibit No. 144 was received in evidence.)

Q. (By Mr. Riddle) Sir, I show you what's been marked Government's Exhibit 145 and 146, and ask you to examine these two, 145 appearing to be for the weekly report ending August 4, 1963. See if any person from

whom you collected for that period is reported by you to have a back assessment? A. On this report there's no back assessment, but there's a figure of seventy-two in the column, which indicates that he paid me some money for a Voluntary.

Q. Now, sir, is that in the same column that you just had labeled in the previous exhibit as a back assessment column? A. Well, this one.

Q. You may answer that yes or no, and then explain it, sir. Is that the same column, sir? [910] A. It is in the same column.

Q. That you had previously labeled in your previous report as a back assessment column? A. That's right. Could I say——

Q. If you have an explanation, yes, sir. A. On this one, it says "Card Number" and it was just used as a space as a reference that somebody paid me money.

Q. Yes, sir. Now, sir, let me show you what's been marked Government's Exhibit 146, and ask you if that shows any entries in the same column? That's the column that is immediately to the right of all the names. A. Yes, there's three entries in the column.

Q. Mr. Crum, he has a back assessment of how much? A. It doesn't say back assessment.

Q. All right. But in the back assessment column. A. It says, "Card Number," and in the column below it Crum has seventy-two——

Q. Which is back—— A. It is money that he gave to me that he owed.

Q. Yes, sir.

On his back assessment?

Mr. London: Your Honor, I am going to object to Mr. Riddle continuously using the words instead of asking the witness questions.

[911] The Court: All right. Ask him questions.

Mr. Riddle: All right, sir. Any others appearing on this list?

A. There's two other names on the list showing he gave me money for seventy-two hours, but it is listed under the column "Card Number".

Q. Yes, sir. Now, this column, the card number, just in order that everybody is clear, that's the column that you had previously marked "Back Assessment," is it not? A. It is.

Q. I will show you Government's Exhibit 145, and ask you if there is any back payments or back assessments appearing in that same column? A. In the same column labeled "Card Number," there is a seventy-two hours, showing that a man paid me money.

Q. The money that he paid you there, was that for current payments? A. Current, and what is in the column.

Q. Current and plus this back—— A. That's right.

Mr. Riddle: Your Honor, the Government would offer into evidence its Exhibits 145 and 146, and ask that they be received.

The Court: They will be received.

[912] (Whereupon, Government's Exhibits Nos. 145 and 146 were received in evidence.)

Q. Sir, I will show you what's been marked Government's Exhibit 147, and, again, calling your attention to the first column to the right of the names, have you made any notation on this report for the week ending August 11, 1963? A. Behind the fourth man's name?

Q. Yes. A. Yes. I have the word "back assess".

Q. Sir? A. I have the words "back assess".

Q. What does assess mean to you? A. I am beginning to wonder.

Q. Yes, sir. A. To me, it means voluntary money that he gave to me. And the only reason I would know this, the man would have to volunteer and tell me that he owed some money, or said he wished to donate some money from some job, because I would have no knowledge whatsoever of what he wanted to pay, because it's strictly the man had to volunteer this information to me, because I have no records from any previous jobs that he was on.

Q. All right, sir. Well, in addition to Mr. Price, you have made a notation "Back Assess"? A. That's right.

[913] Q. Does that mean he paid you some money from a back week? A. Well, it could have been from the first five days of the week. He started to work on a Saturday or Sunday on this job.

Q. Yes, sir. So—pardon me, go ahead. A. It looks as if I used the name back assessment instead of voluntary.

Q. Yes, sir. Look by the name Babaz. What notation appears there? A. That is the same way, but it would have to be a Voluntary, because I wouldn't have any record of what he owed.

Q. What are the words beside Babaz? A. It has "back assess".

Q. There is nothing there that you don't really have to appear to be voluntary. You didn't write "Voluntary" on it, did you? A. Well, at that time, evidently the term was used interchangeably.

Q. Yes, sir.

The Government would offer into evidence its Exhibit No. 147, and ask that it be received.

The Court: All right. It will be received.

(Whereupon, Government's Exhibit No. 147 was received [914] in evidence.)

Q. Sir, I will show you next what has been marked Government's Exhibits Nos. 151, 152, 153, 154, 155 and

156, and ask you to examine them and see if in the same column we are talking about if you make a notation of "back assessment" on each and every one of those reports? A. I did.

Mr. Riddle: The Government would next offer into evidence its Exhibits Nos. 151 through——

The Court: 151 through 156.

Mr. Riddle: The other two have been taken out, Your Honor.

The Court: All right. They will be received.

(Whereupon, Government's Exhibits Nos. 151, 152, 153, 154, 155 and 156 were received in evidence.)

Q. Sir,—— A. Yes, sir.

Q. ——are you reluctant to call these payments into the Voluntary Fund assessments? A. I am not reluctant. I mean it's the—I think it is the difference of our meaning and someone else's meaning of using the term interchangeably.

Q. You say it is our meaning? A. I'd say most——

[915] Q. Just a minute. When you say our meaning, do you mean our meaning is assessment, and somebody else's meaning might be something else? Is that what you mean? A. Well, I'd say our meaning, our, my meaning instead of including ours. That I realized it was voluntary, and I think the men realized it was voluntary, and it was just our method that we grew up with assessments that I think we interchangeably or unconsciously used the term assessments instead of voluntary.

Q. Yes, sir. Sir, the word assessment wasn't new to you at that time, was it? A. I don't think so.

Q. You had become familiar with it in 1942, when you first became a member of Local 562? A. I believe there was assessments at that time.

Q. Yes, sir. Sir, have you talked to anybody, or anyone that told you, "Refer to these as voluntary contributions rather than assessments"? Has anyone told you to refer to them as that? A. No, sir.

Q. Have you talked to anybody since yesterday about your testimony here? A. About my testimony here?

Q. Yes. [916] A. Did I talk to any——

Q. Yes. A. I did.

Q. Did you talk to Mr. Richardson? A. Who is Mr. Richardson?

Q. I am talking about——

The Court: Mr. Guy Richardson.

Q. (By Mr. Riddle) Guy Richardson? A. I did.

Q. When were you subpoenaed? A. 6:00 o'clock.

Q. Last night? A. Yes.

Q. How did you talk to Mr. Richardson? A. He called me on the telephone.

Q. What time? A. Maybe 6:30. I don't know. It was after dinner, because I was at the dinner table when I guess the agent, or Mr. Creley, I think he told me his name, when he served the paper.

Q. In this conversation, did he tell you that he had identified you as the person who filled out these reports? A. He did.

Q. Did he tell you the type of questions you might be [917] asked when you came in the courtroom? A. He said it had reference to——

Q. Assessments rather than voluntary contributions? Is that what he told you? A. I don't remember, but he said it had to do with the wording on the voluntary sheet.

Q. Yes, sir. Did he give you any advice about how you should testify? A. No, sir.

Q. Did he tell you the purpose of his calling you?

Mr. London: Your Honor, I am going to object to this. It is not relevant or material, as well as calling for hearsay.

Mr. Riddle: I think it is relevant and material. Your Honor.

The Court: Well, isn't it hearsay as far as these defendants are concerned though, Mr. Riddle?

Mr. Riddle: Well, it could very well be, as far as these defendants are concerned.

The Court: OK.

Mr. Riddle: It is, but it is relevant insofar as the credibility of this witness's testimony is concerned.

Mr. London: We are going to object to that, Your Honor. Mr. Riddle is attacking the credibility of a witness that he placed on the stand.

[918] Mr. Riddle: Well, now, Mr.——

The Court: I am not going to get into an argument about that now in front of this jury, and I am going to sustain the objection as to what Mr. Richardson told him, because it is hearsay. All right. Let's proceed.

Q. (By Mr. Riddle) Sir, did you talk to anybody else besides Mr. Richardson? A. I did.

Q. Who? A. Mr. Nangle.

Q. Mr. Jim Nangle? A. That's right.

Q. When did you talk to him? A. I called about—I don't know—7:00 o'clock, made arrangements to talk to him.

Q. Did you ask for an appointment to talk to him? A. I did.

Q. Did you talk to him last night? A. I met him; yes.

Q. Where?

Mr. London: May we——

The Court: Come up.

(Thereupon the following colloquy ensued among the Court, and counsel, at the bench, out of the hearing of the [919] jury:)

Mr. London: Your Honor, at this time I want to object to this line of questioning, and also to request and instruct the Court to the effect that there is nothing improper about an attorney for the defendant interviewing any witnesses that may be called in a case, unless Mr. Riddle can show that there was anything improper about the interview on the questioning. I think that he is attempting to leave an impression with the jury that something was done by the attorney for the defendant that is improper, and unless he is prepared to offer evidence to that, I think it is highly prejudicial to leave this impression with the jury.

The Court: Well, of course he hasn't concluded his interrogation, first of all.

Mr. London: May we, at this point, ask Mr. Riddle if he intends to show there was something improper?

The Court: I don't think—Mr. Riddle doesn't have to tell you what he is going to do at all, and I will take care of the situation.

Mr. Riddle: Your Honor, I want to point out that this witness began his testimony about talking about lawyer talk as opposed to other type of talk. He has consistently confused the word "assessment" for "voluntary contribution," clearly showing that he had some prompting and some advance [920] notice as to the type of questions that he was going to be asked. I think that is sufficient basis for this inquiry to be justified.

The Court: I have not denied you the opportunity to make the inquiry, and I will tell the jury that counsel for the defense have a right to interrogate witnesses on the questions——

Mr. London: For the record, may the continuing objection go to this line of questioning, so I don't have to interrupt Mr. Riddle again?

The Court: No. You make your objections whenever they should be made. This business of making continuing objections is not going to continue.

Mr. London: I am just doing it trying to expedite the matter.

The Court: It isn't a question of expedition. It is a question of keeping a record in proper order. I have no objection when it refers to exhibits, such as 144 through 156, but when it continues to the interrogation of a lot of witnesses, I have a very substantial objection to it.

(Thereupon the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Sir, in connection with the terminology or the phrases "assessments" and "voluntary", [921] what is your understanding of what voluntary means? A. Well, voluntary, to me, means that if I sign a card pledging something, that it is a voluntary thing. It's the same as if I sign a pledge to the church, and if I told them I'd give them $10.00 a week, that I feel that I should fulfill my obligation, and if any time I decided not to fulfill the obligation, or financially I could not fulfill the obligation, I would either refuse to donate, or ask to be excused from such.

Q. Sir, that explanation that you have just given, did anyone give that explanation to you? A. No, sir.

Q. This is your own explanation? A. That is my interpretation.

Q. Yes, sir. Sir, with respect to voluntariness, do you consider the payment of your telephone bill voluntary? A. Well, in a sense that I signed up to get a telephone. If I want a telephone, I have it to the point that I need the phone. Therefore, when I receive service for that, I feel like I should pay for it.

Q. Do you consider it a voluntary payment? A. It is voluntary from the fact that I asked for a telephone. If I didn't want to pay it, I could have the choice of having the telephone taken out.

Q. Yes, sir. Sir, how do you consider the payments of [922] your gas bill? Do you consider them voluntary?

Mr. London: Your Honor, I am going to object to this question; calling for a conclusion of the witness; irrelevant and immaterial to the issues in this cause.

The Court: No. He may answer.

The Witness: You wouldn't necessarily have to have gas.

Q. Well, do you consider your payments voluntary? A. To the point that I asked for service, yes, and I am getting a product for it.

Q. And those voluntary payments are each month? A. That's right.

Q. And then based upon the amount of gas that you use? A. I'd say yes.

Q. These "voluntary" payments that you make to the Union are paid upon the number of hours you work? A. That's right.

Q. Now, sir, in addition to the labeling of these payments as assessments on the exhibits that we have offered into evidence, and which have been received into evidence, have you used, or have you described these payments as assessments on other occasions, and other reports that you filed with the union hall? A. On Voluntary?

[923] Q. On these forms that we have just gone over? Have you made other forms like these out and referred to back debts or back amounts as back assessments? A. I have no knowledge of any exact ones that I did. I'd either be assuming that during the time I was three years a steward, that this is all that showed upon my report.

Q. You are assuming that? A. Well, otherwise, I mean I am assuming that you'd have them in evidence if there were more.

Q. My question is, are there more, or are there not? A. I do not know.

Q. I see. Sir, besides the name and the amounts collected on the report that you filed with the Union, what do the letters ROT mean? A. It probably shows up in the last column, and it means the fact that this job took part during the strike when the men were rotated out of the job and they were replaced with someone else the following week.

Q. This ROT, does this mean that the person was excused from paying his "voluntary" payments?

Mr. Daly: Your Honor, I am going to object to that manufactured term "voluntary." I object to it. No witness has used that. I object to Mr. Riddle's use of it.

The Court: All right. It will be sustained.

[924] Q. (By Mr. Riddle) I show you what's been marked as Government's Exhibit No. 150. I believe you previously identified that as the one that was prepared by you and in your own handwriting or printing? A. Yes, sir, I believe so.

Q. Now, sir, there is a list. The first nine names shows work from forty-four to forty-eight hours, and no payment was made into the Voluntary Fund; is that correct? A. This first list?

Q. Yes. A. From here down?

Q. Yes. The first nine. A. That's right.

Q. And instead of the amount that normally appears there of the payment, there appears the three letters ROT? A. That's correct.

Q. Now, tell the Court and jury what that ROT stands for? A. It meant that the men were rotated out of the job, and there would be knowledge, or there would be no way for me to collect the money, because they wouldn't be on the jobsite the following Monday.

Q. All right. So according to your report, they didn't voluntarily contribute at that time?

Mr. London: I am going to object to the form of [925] that question. That is not my understanding that the witness just testified.

The Court: What your understanding is and what the question is are two different things. If he can answer the question, he will answer it, and if he can't, he won't. The objection will be overruled.

Mr. London: May the record also show my objection to the form of the question?

The Court: Be overruled.

Q. (By Mr. Riddle) Sir, does that mean these nine people didn't voluntarily pay into the Fund, pay to you that week? A. This means that those nine men were not on the job that Monday to pay a Voluntary Fund to me.

Q. Yes, sir. A. Because this ends on Sunday.

Q. Yes, sir. This is a report that you filed with the hall? A. Yes.

Mr. Riddle: The Government would offer into evidence its Exhibit No. 150, and ask that it be received.

Mr. Daly: May we show our objection?

The Court: All right. It will be received. The objection will be overruled.

(Whereupon, Government's Exhibit No. 150 was received [926] in evidence.)

Mr. Riddle: Your Honor, I believe that is all I have of this witness.

The Court: All right. Do you want to interrogate him now, or do you want to go to lunch?

Mr. Randall: Go to lunch.

The Court: All right. We will return at 2:15. Members of the Jury, bear in mind the admonition I have given you heretofore.

(Thereupon, at 12:45 p. m., court was in recess for lunch until 2:20 p. m.)

Tuesday, September 10, 1968.
Afternoon Session.

THOMAS E. CONROY,

having previously been sworn, resumed the witness stand and the further following proceedings were had before the jury:

Mr. Riddle: If it please the Court, I have one more exhibit to have marked and put in.

The Court: OK.

Mr. Riddle: If we can at this time.

(Thereupon, Government's Exhibit No. 157 was marked by the reporter for the purpose of identification.)

Q. (By Mr. Riddle) Sir, I will show you what has been [927] marked Government's Exhibit 157, and ask you to examine it and determine if that was prepared by you and in your handwriting, or in your printing? A. Yes, it was.

Q. Sir, does that purport to cover the pay period ending September 1, 1963, on the Fisher Body job? A. It does.

Q. Mr. Guy Richardson is the foreman? A. He was.

Q. And that's the job on which you were the steward? A. That's right.

Q. Sir, does that show that Mr. C. Clark paid a back assessment of $21.50? A. No, it does not. It shows that he paid four days and two hours current Voluntary in the column is the words "back assessment".

Q. You put the words "back assessment" there? A. Yes, sir.

Q. All right, sir. Why did you put the words there? A. I don't know why. Just I guess a terminology is all I can say.

Q. Well, sir, is it true that the number of hours worked by Mr. Clark for that week was thirty-four, as indicated in the column? [928] A. That's right.

Q. And his normal payment would be what, for thirty-four hours per week? A. Oh, $2.00.

Q. Two dollars? A. Or $4.00.

Q. Four dollars for thirty-four hours? But the report you made showed $21.50. A. That's right.

Q. All right. The difference between $4.00 and $21.50, what does that represent? How do you account for that? A. He paid me.

Q. For back assessments? A. Well, you term it back assessment. It is a term that I used on that first column.

Q. Yes, sir. I'm not putting these words in your mouth, am I? A. No. It is written there.

Q. By you? A. Yes, sir.

Q. Now, in the same column underneath "back assessment", is there a Mr. Eads who makes a payment? A. That's right.

Q. And under that same column, directly below "back [929] assessment", is there figures entered there, forty hours? A. Forty hours is right.

Q. All right. And how many hours did Mr. Eads work for that pay period? A. Thirty-two hours for the current pay period.

Q. And thirty-two hours would be how many days at that time? A. Roughly, four days.

Q. He would owe roughly $4.00 for the current week? A. That's right.

Q. So the difference between $4.00 and $9.00 would be $5.00? A. Right.

Q. Sir, is the back assessment for forty hours, is this what that represents? A. It represents forty hours that he paid me from some other job.

Q. Yes, sir. All right, sir.

The Government would, at this time, Your Honor, offer into evidence its Exhibit No. 157, and ask that it be received.

Mr. London: Your Honor, may the record reflect the same objections that were made to Exhibits 144 through 156?

The Court: The record will show the same objection and the same ruling. It can be received.

[930] (Whereupon Government's Exhibit No. 157 was received in evidence.)

Mr. Riddle: That is all the questions.

Cross-Examination.

By Mr. Randall:

Q. Mr. Conroy, I first hand you Government's Exhibits 144, 145 and 146, and I will ask you if those are all dated August 4, 1963? A. They are all dated August 4, 1963.

Q. Then, Mr. Conroy, I hand you Government's Exhibits 147 through 155, and I will ask you if they are all dated August 11, 1963? A. They are.

Q. And I'll hand you the last two exhibits, 156 and 157, and I'll ask you if each of those are dated September 1, 1963? A. They are.

Q. Now, sir; during those three periods, those three pay periods that all these exhibits come from, Local 562 was on strike; isn't that correct, sir? A. We were on strike from June 15 or 16, roughly, think seventy days.

Q. Up through the 1st of September, weren't they? A. Roughly; yes.

Q. And following the strike, when the strike was over [931] is when the contractors started checking off dues and assessments of the Local, isn't that correct, sir? A. I think it was under the new contract.

Q. Yes. And prior to the new contract, when you served as a steward you collected dues and assessments, as well as voluntary contributions, isn't that correct? A. That's right.

Q. During the strike—and, incidentally, the strike did not apply to all employers, did it? A. No. It only applied to the members of the Contractors Association, I believe.

Q. And during the strike, the Local rotated the people through the jobs that remained, didn't they? A. Yes.

Q. In other words, a man might work a few days, and then be off a while, and go to another job, and things of that nature? A. That's right.

Q. So that when a man came on your job on August 4th, or during that week ending August 4,—and I'll show you first Government's Exhibit 144, sir—you have a number of people on that particular sheet, and there were three people who came on that job that week and offered to you the contributions for work that he had

failed to pay on the last job [932] because of his departure before the date of collection; is that true? A. Well, that's where these figures here came. That had to be a voluntary number unless it was carried over from a specific week that he had worked on our job.

Q. There are three of them on there? A. I will tell you this. I don't know offhand. I'd have to have the sheet prior to August 4th, the week prior. I am assuming that they come on and that they volunteered this money.

Q. All right. And in the first column, which is for the card number of the employee, you have inserted, with respect to J. Menke, thirty-two plus, haven't you? A. That's right.

Q. Now, that's thirty-two hours plus the seventy-two that he worked during that week that is shown in the other column? A. That's right.

Q. For a total contribution of $13.00? A. Right.

Q. And you have a similar situation with respect to Malone and Budde, isn't it? A. Budde.

Q. And on Exhibit 145, which is a part of the same week's [933] report, you have another man whose name is Barry, and you got seventy-two plus, and then seventy-two hours there, and he contributed for two weeks, didn't he? He contributed twice what the others did, $18.00, and you show seventy-two hours over here, plus the seventy-two over here; isn't that correct, sir? A. That's right.

Q. Now, of course, you didn't know these men—and then on the third exhibit, there are three more where they show a seventy-two over here another week, there's two weeks shown; right? A. That's right.

Q. On this exhibit. And on one of these exhibits, and only one, you have marked out the words "card number" and inserted "back assessment"? A. Assess.

Q. Now, the only way you knew that this man had not made his contribution for the prior week was by his coming and telling you, and offering you the money; is that correct, sir? A. That's right. If he was on another job.

Q. Then this group of exhibits that relate to August 11, or the following week, starting first with 147, most of the men there were—that was a short week, wasn't it, for those [934] people, two days? A. Started on a Saturday.

Q. Those people then had been rotated in to you the middle of the week? A. That's right.

Q. And there's a couple of them who paid a back amount of $2.00—no, of $5.00. In other words, it shows ten for some and five for the ones that only worked two days; is that right? A. That's right.

Q. And those men came to you and told you that they had not made their contributions on the prior job? A. That's the only way I'd know it.

Q. And that's true with a number of people in this report for this week? A. That's right.

Q. You have some people working the last two days of the week, and some of them working the first three or four days of the week, don't you? A. That's right.

Q. Now, Mr. Conroy, at that time you were also collecting the dues and assessments of the Local? A. Correct.

Q. And you had forms for that purpose that were similar [935] to these, but had dues and assessments at the top, isn't that correct? Or something of that nature? A. Similar to that.

Q. This form here has "Pipefitters Voluntary Fund" at the top, doesn't it? A. That's right.

Q. And in making your collections, I suppose at the same time these men were coming in and paying their

dues and assessments, their back dues and assessments? A. That's right.

Q. And whatever you happened to label it, Voluntary Fund, or use the term assessments, did you tell any of these people that it was mandatory that they paid into this Voluntary Fund? A. I did not.

Q. Did you tell any of them that if you did not pay they would not be permitted to continue to work? A. No, sir.

Q. Did you ever tell anyone that? A. No, sir.

Q. Did you ever tell anyone that he would not be given his rotation during this strike if he did not pay into the Voluntary Fund? A. No, sir.

Q. Did any of these defendants, Mr. Callanan, Mr. Lawler, [936] or Mr. Seaton, ever tell you to tell anyone that? A. No, sir.

Q. Have you always paid into the Voluntary Fund? A. Ever since its inception, since I have been in the Local.

Q. Are you still paying? A. Yes, sir.

Q. And, sir, what political party are you affiliated with? A. You mean the way I vote or——

Q. Do you consider yourself a Republican, a Democrat, or an independent? A. Well, I vote a Democratic ticket.

Mr. Randall: I believe that's all the questions I have.

(Thereupon Defendant Union Local 562's Exhibits F and G were marked by the reporter for the purpose of identification.)

Q. (By Mr. Randall) Mr. Conroy, I hand you what has been marked Defendant Union Local 562's Exhibits F and G, and I will ask you, sir, if those are the Voluntary Cards that you signed? Do they contain your signature? A. They are.

Q. And would you give the dates, starting with G? [937] That is G you are looking at now. A. 1-14-63.

Q. And then F, what is the date of it? A. 12-7-66.

Mr. Randall: That is all the questions I have, Your Honor.

Redirect Examination.

By Mr. Riddle:

Q. Sir, do I recall your testimony accurately, that the strike concluded sometime the latter part of September of '63? A. I said it lasted roughly seventy days, I believe. I mean I don't know for sure.

Q. And it began when? A. I think the morning of the 16th of June.

Q. 16th of June? A. I believe—It started the day after the contract ceased, and I think it was the 15th.

Q. So you would have been on strike through the months of July and August? A. Definitely.

Q. Now, how many jobs were still working or going on in spite of this strike? A. I wouldn't have any knowledge.

Q. Well, do you know about how many members of 562 were [938] out of work because of the strike, during that period? A. I don't think I'd have any knowledge of it.

Q. Sir, you mentioned that the workers were being rotated around so that each one of them could get some work during some part of each week? A. That's right.

Q. What was the purpose for that, if you know? A. To share the wealth; share the work.

Q. To share the work, so that each one of them could have enough income to live on during the strike? A. That's right.

Q. This was an acknowledgement that they needed some money in order to support themselves, buy groceries, etc.? A. I imagine so; yes.

Q. Now, sir, these are the same people, the same members which you testified to that came up to you and wanted to voluntarily contribute for their back payments immediately, the first week they were back on the job after being off on a seventy-day strike? Are these the same people that you referred to who wanted to voluntarily contribute to you? A. What period of time are you talking about?

Q. I am talking about the people who came back the first week after the strike, these people that Mr. Randall talked to you about, who paid sums of money in addition to [939] their regular payment. A. Well, some of the men had been working the weeks prior.

Q. But they hadn't been working full weeks, had they not? Weren't all your people rotating in order to help them out during this stress period? A. I have no knowledge whether they were all rotating or not, without having some record of the books at the hall.

Q. Yes, sir. As a matter of fact, these books at the hall, they were not available to you, I take it? A. I guess they were if I wanted to look at them, but I never had any need to look at them.

Q. The assignments or rotations were made from the hall and not by you, were they? A. The men who were referred from the hall, yes, sir.

Q. And the hall had access to whatever access were there, and they made their determinations, I suppose, upon what information they had? A. I assume that.

Q. Sir, you answered Mr. Randall by saying when these men came back on the job, that they came up to you and said that they were behind in their contributions and wanted to catch up, or words to that effect. Well,

sir, if they said that they were behind and wanted to make their contributions, [940] why did you write down on the card, or on the papers, "back assessments," rather than contribution? If they said contribution, why didn't you write this down, rather than assessment? A. Well, I used the term contributions. I don't know if they said contributions or Voluntary.

Q. Or assessments? A. Or assessments, if that's the way you wish.

Q. Yes, sir. They could have said, "Here is my back assessments," just as easily as they could have said the other? A. I imagine so.

Q. Yes, sir. In fact, some of these people in returning from strike paid as much as $24.00 out of their first pay-check, did they not? A. I don't know if they were out of work all that time.

Q. Yes, sir. A. They could have worked a week and been off a week and rotated, come back to work again.

Q. But this was a period of time when members of Local 562 weren't particularly flush with money, wasn't it, because of the strike? A. I don't know whether they were flush with money. It depends if they were prepared for a strike.

Q. In any event, their income was less for that period of time, wasn't it? [941] A. Definitely.

Q. Sir, in looking over these exhibits, and you looked them over carefully this morning, as I recall, did you see a single man on there on your job who didn't pay you money for the period of time that's covered? A. I don't think so. I didn't study them that close, but I imagine most of them paid.

Q. You imagine most of them did, or all of them? A. Or all of them.

Q. And that was true throughout this job, wasn't it? A. Except the men that rotated, I'd say.

Q. And the men that rotated may have paid on another job? A. They could possibly have. I have no knowledge of that.

Q. You wouldn't know that? A. No, sir.

Q. But the records that were filed with the hall would show that, wouldn't they? A. I imagine it would.

Mr. Riddle: Yes, sir. That's all.

The Court: Mr. Randall?

Mr. Randall: No questions.

The Court: All right. You may be excused.

(Witness excused.)

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[946] **WALTER DETRICH,**

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, you are Mr. Walter E. Detrich? A. That's right.

Q. Spelled D-e-t-r-i-c-h? A. That's correct.

Q. And you live here in St. Louis? A. Yes, sir.

Q. Sir, are you a pipefitter and a member of Local 562? A. I am.

Q. How long have you been a member of that local? A. Eleven years.

Q. Eleven years? A. Yes, sir.

Q. Sir, are you a foreman at this time? A. Yes, sir.

Q. How long have you been a foreman? A. About three months.

Q. Are you now a steward? A. Yes, sir.

[947] Q. How long have you been a steward? A. On this particular job that I'm on right now?

Q. Well, or at any time? A. Well, a little over four years all together.

Q. All right, sir. Sir, were you a steward in 19 and 64, and particularly I'm referring to the Veterans Hospital project down at Jefferson Barracks here at St. Louis. A. Yes, sir.

Q. Who was your foreman? A. Tom Williams.

Q. Do you know if Mr. Tom Williams is the gentleman who testified here earlier in the trial? A. Yes, sir.

Q. You know he did testify? A. Yes, sir.

Q. Did he tell you? A. I talked to him yesterday in the witness room.

Q. Yes, sir. Mr. Detrich, in connection with the job down at Jefferson Barracks, did you prepare forms or documents which reflected the amount of money paid by people working on that job? A. I did.

Q. Did you prepare them in your own handwriting, generally? A. Yes, sir.

[948] Q. Did you ever seek the assistance of typist? A. I don't recall now. There was a typewriter in the office, and it may have been used on one occasion or more, but I just don't remember that.

Q. Did you use the typewriter yourself some? A. I can use one.

Q. All right, sir. Sir, do you remember an employee on that project by the name of Weis? A. Yes, sir.

Q. What is his first name? A. That I don't know.

Q. Is it W? A. I just don't recall.

Q. I see. Sir, I will hand you what's been marked Government's Exhibits 98—89, rather. 89A-1, and 89A, 89B, 89C, 89D, 89E, 89F, 89G, 89H, 89I, 89J, 89K, 89L and M, and ask you to examine them and tell the Court and jury

if those were prepared by you, and if they are in your handwriting? A. Yes, sir, I would say that's my handwriting.

Q. Are all the entries on these documents or exhibits your writing and made by you? A. Yes, sir.

Q. I see. Sir, I'm referring you now to——

Mr. Randall: Is that 89A-1 through 89M, Your Honor?

[949] Mr. Riddle: Well, it is 89, and then 89A-1 and 89A. I hand you what's been marked Exhibit No. 89A-1, and ask you to examine it and see if it refreshes your recollection as to why Mr. W. Weis——

Mr. Daly: Your Honor, may we see these before he starts reading them?

Mr. Riddle: Sure.

(Mr. Riddle handed exhibits to defense counsel.)

Mr. London: Your Honor, may the objection that we made with regard to the testimony concerning Exhibits 144 through 156 apply to the testimony concerning these exhibits, and the exhibits themselves?

The Court: Well, I think it would be better, Mr. London, if you would restate them then here in the record at the right time.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. London: If the Court please, we wish to object to all testimony concerning Exhibits 89, and 89A-1 and 89A through 89M, both inclusive, on the grounds that there are statements contained in those exhibits which are irrelevant and immaterial to any of the issues in this cause. From an examination of these exhibits, it appears that Mr. Riddle is [950] going to question the use of the

words "assessments," and "no assessments," and of the words of similar import.

It is our position that whatever the frame of mind or understanding of this witness might be as to his reason for using such terms or phraseology would in no way be binding on the defendant in this cause, and that they would be irrelevant and immaterial, in addition to being hearsay, and that evidence of this nature would be prejudicial to the defendants.

The Court: All right.

Mr. London: I might ask Your Honor again, subject to the approval of the Court, that the objection be continuing as to the testimony concerning these exhibits, and the exhibits themselves, so I need not interrupt continually.

The Court: Well, as to the exhibits, it would be continuing, and they will be overuled.

(Thereupon the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Sir, I will withdraw my last question, and we will begin before the brief interruption.

Sir, in connection with these forms that you filled out, did you collect the money yourself? A. Yes, sir.

Q. Do you remember Mr. Herman Novack? [951] A. I do.

Q. And did you collect from him $10.00 a week for forty hours' work? A. If that is what it says there, I did.

Q. All right. Do you remember Mr. Cliff Davenport? A. Yes, sir.

Q. And did you collect $10.00 a week for forty hours worked from him? A. I did.

Q. On that job. And, sir, do you know if these two gentlemen were out-of-towners, or regular 562 members? A. They were out-of-town members.

Q. Do you remember what local they were members of? A. No, sir, I do not. I think Davenport was from Los Angeles.

Q. Now, Mr. W. Weis, do you remember him? A. Yes.

Q. Did you collect any money from him? A. No, I did not.

Q. No money of any kind? A. That's right.

Q. Now, why did you not collect from him? A. Well, he was—his father had just undergone a real serious illness, and I think had a hospital and doctor [952] bill that amounted to around $7,000, and I think you can see his scale, he was working as an apprentice, and that's the reason he wasn't asked to contribute to the Voluntary Fund.

Q. You didn't do this on your own, did you? A. No, I didn't.

Q. Who did you call to get permission to exempt him?

Mr. Daly: I am going to object. That is assuming something not in evidence.

Mr. Riddle: He said he didn't do it on his own.

The Court: Well, I don't know.

Mr. Riddle: I will rephrase that question, Your Honor. Withdraw it.

The Court: All right.

Q. (By Mr. Riddle) You testified you didn't do this on your own. Who did you talk to about it? A. That, I don't recall, sir, whether I talked to someone, or someone talked to me. To the best of my knowledge, I just don't remember.

Q. Well, did you talk to someone down at the hall? A. It would have been someone from the hall.

Q. Does it refresh your recollection if I mention the name Ed Steska? A. Could have possibly been him.

Q. Who else could it have been? [953] A. Well, it could have been any one of our business agents.

Q. Could it have been Mr. Lawler? A. Could have been.

Q. Mr. Seaton? A. Could have been.

Q. Or Mr. Callanan? A. No, I'm quite certain it wasn't Mr. Callanan.

Q. But you are certain that someone at the hall gave you these instructions? A. That's correct.

Q. Why did you need instructions, sir? A. Well, it's customary to ask a member that's just coming on a job if he wants to contribute to the Voluntary Fund, and have him sign a card.

Q. Did you do that in this case? A. No, because I was told when this man came to work that he was not to contribute to this Fund.

Q. All right. Well, sir, were you told by someone at the hall, one of these gentlemen whose names that I have just mentioned——

Mr. London: Your Honor, I want to object to the form of that question. I'd like the record to show that the witness said in response to Mr. Riddle's question, that it [954] could have been one of the names mentioned, but I do not think the witness said that it was one of the names mentioned. I think that the question is improper in form, and assuming something that the witness did not testify to.

The Court: All right. I will sustain it as to the form of the question.

Q. (By Mr. Riddle) Sir, did you have the conversation with someone at the hall before Mr. Weis came down and reported to work? A. In all probability, yes.

Q. Well, now, would this have been a call to you then, rather than a call from you to them? A. Probably a call to me.

Q. A call to you. Now, you say you are not sure who the person was that made the call? A. No, sir, I am not.

Q. Can you tell the Court and jury the substance of what was said in this conversation when the call was made? A. Well, just that he was not to contribute to the Fund. That's as far as I can tell you. This is something that happened almost five years ago, and at that time it didn't make any impression on me. It was nothing that was important enough that I should remember at all.

Q. Yes, sir. Now, then, did you receive a call from [955] the hall telling you to not collect from anybody else on that job? A. No, sir, I did not.

Q. Now, sir, when you filled out these weekly reports, did you include Mr. Weis's name on it? A. Usually.

Q. Well, what do you mean? A. Well, it is the usual procedure. I would put his name down since he is working there.

Q. Whether he made any payment or not? A. That's correct.

Q. Now, sir, I will show you again what's been marked Government's Exhibit 89A-1, and ask you if the writing that appears beside Mr. Weis's name, namely "$2.50 per hour no assessments," if that was in your handwriting? A. Yes, sir.

Q. Now, what did you mean by this? No assessments for what? A. Well, assessment is just a term, not necessarily meaning assessments as such, but a contribution to the Voluntary Fund is actually what is meant by that.

Q. Well, you know what assessment means, don't you? A. Yes. I have a fair idea what assessment means; yes, sir.

[956] Q. Is there any difference between assessment and voluntary? A. Yes, sir.

Q. What is the difference? A. Well, an assessment doesn't necessarily have to be voluntary. Where a voluntary fund—contributions to that is voluntary.

Q. Did you know the difference between the meaning of those words at that time? A. Yes, sir, I did.

Q. Well, then why did you put "assessments" here instead of voluntary? A. Because it is a word that's used loosely among all of us, and——

Q. Yes, sir. All right, sir. I show you the rest of the exhibits that I have mentioned. I call your attention to Government's Exhibit 89C, and ask you if the words, "No assessments" appear beside Mr. Weis's name? A. They do.

Q. And Government's Exhibit No. 89—that was C—89D, the words "no assessments" appear beside Mr. Weis's name? A. That's correct.

Q. I show you Government's Exhibit 89G, and ask you if "no assessments" appear beside Mr. Weis's name? [957] A. They do.

Q. I show you Government's Exhibit No. 89I, and ask you if the words "no assessments" appear beside Mr. Weis's name? A. They do.

Q. Is that your handwriting there also? A. Yes, sir.

Q. Sir, did you see the words "no contributions" appearing anywhere in any of these exhibits that relate to Mr. Weis? A. No, I didn't.

Q. In Government's Exhibit 89A-1, I believe the words appear "no assessments" beside Mr. Weis's name? A. That's correct.

Q. Sir, in the telephone conversation that you had from the hall, let me ask you this, whether or not you were told, and whether or not these words were used, that Mr. Weis was to be charged no assessments?

Mr. Daly: I object to this as being hearsay, Your Honor.

Mr. Riddle: No, it is a conversation from one of the business agents down at the hall, Your Honor.

Mr. Daly: Your Honor, there is no evidence he talked to a business agent. He didn't indicate who he talked to.

The Court: Well, he's indicated it could be any one [958] of a number of people, and I don't think that—As a matter of fact, the witness has said he doesn't remember who it was. I will sustain the objection.

Q. (By Mr. Riddle) Sir, let me ask you again, do you recall who it was you talked to? A. No, sir, I do not.

Q. Do you know if it was one of the officers? A. I would say it would have to be.

Q. Why would it have to be one of the officers? A. Well, I wouldn't take orders from anyone else.

Q. Are you saying that you wouldn't write "no assessments"? A. Assessments, sir, is just a word that has actually no meaning there.

Q. Sir, are you testifying that you wouldn't refuse to accept money from anyone unless one of the officers told you not to collect it? Is that what you are saying? A. In this particular case, yes.

Q. Otherwise you would have been collecting from him? A. If he had signed a card, one of the Voluntary Cards, yes.

Q. Did you ask him to sign a card? A. No, sir, I did not.

Q. All right. Sir, can you tell the Court and jury why you consistently and each week made a record of Mr. Weis, [959] although he made no payments? A. Well, just because he was one of the people working there.

Q. And did you, on all of your reports, account for every person that was working on your job, on these reports, to the Pipefitters Voluntary Fund? A. Yes, sir.

Q. On whose instructions did you do that? A. Well, I took this job over from Tom Williams. That is the way he made them out, and that's the way I made them out.

Q. These reports include everybody? A. All of 562, plus out-of-town men. All pipefitters, let us say.

Mr. Riddle: Yes, sir. The Government has nothing further of this witness.

The Court: All right. Who is going to cross-examine?

Mr. Riddle: The Government would like to offer into evidence, however, its exhibits 89, 89A-1, and 89A through 89M, and ask they be received.

The Court: They will be received.

(Whereupon Government's Exhibits Nos. 89, 89A-1, 89A, 89B, 89C, 89D, 89E, 89F, 89G, 89H, 89I, 89J, 89K, 89L and 89M were received in evidence.)

(Thereupon Defendant Union Local 562's Exhibit H was [960] marked by the reporter for the purpose of identification.)

Cross-Examination.

By Mr. Daly:

Q. Mr. Detrich, I will hand you what's been marked Union Local 562's Exhibit H, and ask you what that is, sir? A. This is a Voluntary Contribution Agreement signed by James O'Mara and witnessed by myself.

Q. Oh, I am sorry. I got the wrong one. Is it signed by James O'Mara and witnessed by yourself, or is it signed by you and witnessed by James O'Mara? A. It is signed by me and witnessed by O'Mara.

Q. Is that your signature that appears on the bottom? A. No. Where it says "signed".

Q. Where it says Walter Detrich, is that your signature? A. That's my signature.

Q. Were you the steward on the Jefferson Bank job from the beginning until the end of the job? A. No, sir, I was not.

Q. And when did you become the steward down there? Can you tell us? A. No, sir, I don't remember. I think the dates on those sheets that you have there could probably tell you when I started as steward.

Q. You don't recall. Did Mr. Weis come to the job [961] after you became the steward? A. I think so.

Q. And then you were the one that would have talked to him and would have not asked him to sign the Voluntary Card, is that correct? A. That's correct.

Q. Do you know how long Mr. Weis worked on that job? A. No, I don't.

Q. Do you know when the job closed down? A. I wasn't there when it closed. I was transferred to the powerhouse at Portage de Sioux.

Q. Was Mr. Weis still on the job at the time you were transferred? A. To the best of my recollection, he was.

Q. Now, Mr. Dietrich, do you contribute to the Voluntary Fund yourself? A. I do.

Q. Has anyone ever told you that you had to contribute? A. Never.

Q. Has anyone ever told you that it was a condition of your working that you contribute to this Fund? A. Absolutely not.

Q. Did you ever tell anybody from whom you collected that it was a condition of their working that they pay into [962] this Fund? A. No, sir, I never did.

Q. Did any of these defendants, either Mr. Callanan, or Mr. Lawler, or Mr. Seaton, ever tell you that you had to pay into this Fund to work? A. Absolutely not.

Q. Did they ever tell you that you had to tell any of the men who came out to these jobs that they had to sign a card that they had to pay? A. No, sir.

Mr. Daly: I have no further questions.

What political party do you belong to, Mr. Detrich?

A. I'm a Democrat.

Mr. Daly: Thank you. I have no further questions.

The Court: Anybody else? Any redirect?

Redirect Examination.

By Mr. Riddle:

Q. Did Mr. Callanan ever tell you that you had to pay your regular dues and assessments? A. He did not. On regular dues and assessments, everybody has to pay that.

Q. No. My question is did Mr. Callanan ever tell you that you had to pay your regular dues and assessments? A. No, he never did tell me that.

[963] Q. Did Mr. Lawler ever tell you you had to pay your regular dues and assessments? A. No, sir.

Q. Did Mr. Seaton ever tell you you had to pay your regular dues and assessments? A. No, sir.

Q. Did anybody on the job, any of your foremen, ever tell you, have to tell you that? A. My regular dues and assessments——

Q. Answer my question, and then you can explain. Did anybody on the job, your foreman or superintendent, ever tell you you had to pay your regular dues and assessments? A. No, sir.

Q. You knew you had to pay them? A. Absolutely.

Q. And none of them ever told you you had to pay your dues or payments into the Voluntary Fund either, did they? A. No, sir. That's absolutely voluntary.

Q. Yes, sir. Well, now, sir, don't you voluntarily pay your regular bills? A. My regular bills is—dues is taken out of my check.

Q. Answer my question, if you would, please.

Mr. Daly: I think he did answer the question. He should be allowed to answer the question.

[964] The Court: I don't think it is an answer, so if he wants to make an explanation, he can make an explanation, but answer the question, Mr. Detrich.

The Witness: Well, the dues——

Q. (By Mr. Riddle) Let me rephrase the question. A. OK.

Q. Do you voluntarily pay your dues, regular dues and assessments? A. Yes, sir.

Q. All right. And you voluntarily pay into this Fund? A. That's correct.

Q. You voluntarily pay your light bill each week, month? A. That's right.

Q. You voluntarily pay your taxes? A. That's right.

Q. Yes, sir. You know what would happen if you didn't pay your light bill? A. Yes, I do.

Q. Your lights would be cut off? A. That's correct.

Q. You know what would happen if you didn't pay your water bill? Your water would be cut off? A. Same thing; that's right.

Q. You have never failed to pay it, have you? [965] A. No.

Q. And you have never failed to pay your Voluntary Fund payments either, have you? A. No, I haven't.

Q. Let me ask you, Mr. Detrich, what happens to you if you fail to pay your Voluntary Fund? A. Not a thing.

Recross-Examination

By Mr. Randall:

Q. May I ask a question? Mr. Detrich, do you have a copy of the By-Laws and Constitution of Local 562? A. Not with me; no, sir.

Q. Well, is that available to you? A. Yes, it is.

Q. And you have read it? A. I have.

Q. And in it you are aware of the fact if you do not pay your dues and assessments, you will be expelled from the Local. Doesn't it say that, sir? A. That's correct.

Q. And if you were expelled from the Local, you could not work, could you, sir? A. Not here, or anyplace else.

Q. And do all of the members of the Local have copies [966] of the By-Laws and Constitution of the Local? A. They do.

Mr. Randall: That is all.

Mr. Riddle: One more question.

The Court: All right.

Redirect Examination

By Mr. Riddle:

Q. Sir, you never tried to find out what would happen if you didn't pay into the Fund, did you? A. No, sir, I did not.

Mr. Riddle: Yes, sir. That is all.

The Court: All right. Step down.

(Witness excused.)

EDWARD McREAKEN,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination

By Mr. Riddle:

Q. Your full name, sir? A. Edward M. McReakin.

Q. Sir, for whom are you employed? A. Crane Company; previously Midwest.

Mr. Daly: Your Honor, we can't make that out.

The Court: Crane Company, previously Midwest. Would [967] you speak into the microphone, sir?

Q. (By Mr. Riddle) Crane Company is a manufacturing business here in the St. Louis area? A. Yes, sir.

Q. Sir, how long have you been employed by the Crane Company? A. Twenty-eight years.

Q. Sir, what do they manufacture? A. Pipe; fittings.

Q. Pipe, fittings? A. Yes, sir.

The Court: You mean they manufacture pipe and fittings.

The Witness: They manufacture fittings from pipe and plate.

Q. Sir, are you a member of Pipefitters Local 562? A. The fabricators.

Q. Yes, sir. A. Affiliated.

Q. Is that a part of Local 562? A. Yes, sir.

Q. How long have you been a member of that Local? A. Since '41.

Q. Now, are you occupying, at the present time, an [968] official position with the Union? Do you have a job title? A. As a shop steward.

Q. Shop steward? A. Yes, sir.

Q. Now, are there several of you people who are generally referred to as metal tradesmen? A. Yes, sir.

Q. Working for Crane? A. Yes, sir.

Q. About how many? A. I would judge about a hundred twenty.

Q. Now, to your knowledge, are all hundred twenty of these people members of Local 562? A. Not all, sir.

Q. How many of them would you say? A. Well, I should say I suppose about ninety.

Q. About ninety of the hundred twenty? A. Yes, sir.

Q. Do you pay dues into Local 562? A. I do.

Q. What are your dues per month? A. $4.00.

Q. Do you pay any assessments? A. No, sir.

[969] Q. You know what an assessment is, don't you? A. Yes, sir.

Q. What is an assessment? A. A collection aside from your regular dues.

Q. Yes, sir. Usually paid upon hours worked or gross income? A. Yes, sir, that would be an assessment.

Q. Do you understand an assessment as being a responsibility of members to pay? Do you understand that an assessment is a prerequisite to membership in an organization? A. No, sir, I don't understand it——

Q. Well, I don't think I have made my question clear, and I'll withdraw it. Sir, you say you just pay $4.00 each month? A. Yes, sir.

Q. And that is all you pay into 562? A. That's right, sir.

Q. And you and your 119 or so, fellow workers down at Crane, do you work there on a permanent basis? A. Yes, sir.

Q. You don't move around from job to job? A. No.

Q. Sir, do you attend the meetings of Local 562? A. No, sir.

[970] Q. Have you ever attended a meeting? A. No, sir.

Q. Although you are a steward? A. Yes, sir.

Q. Do you get a notice of the meetings? A. Through Labor Tribune.

Q. No special notice written and mailed to you? A. No, sir.

Q. Do you have, as a member, the right to attend the meetings? A. Yes, sir, I understand I do.

Q. Right to vote at meetings? A. I would think so.

Q. Full rights, as all other members have? A. I suppose so. I have never attended. I don't know.

Q. Sir, have you ever been asked to pay into a voluntary political fund into 562? A. No, sir.

Q. Do you know of the existence of such a fund? I. see in the paper. That's all I know.

Q. Has anybody out at Crane, the ninety or so, to your knowledge, have they ever been asked to contribute into this Voluntary Fund? A. No, sir.

[971] Q. Have you ever offered to pay? A. No, sir.

Q. To your knowledge, has any member of your organization or member of your crew, or people out there, ever offered to pay? A. No, sir, not to my knowledge.

Q. Have you ever seen anything that's called, or any card that's called a Voluntary Contribution Agreement? A. No, sir.

Q. Nobody ever gave you one? A. No, sir.

Q. Did you ever hear of an organization down at the union hall by the name of the Fund? Did you ever hear of an organization by that name? A. I read in the paper about it, but never mentioned to me.

Q. Sir, as a steward, do you act as a spokesman for your crew in dealing with the other people over in 562, or just what are your relations? A. With 562?

Q. Yes. A. I act as a steward for grievances there, and I have collected dues and assessments, and taken it out, or have sent it out to 562.

[972] Q. Yes, sir. Sir, do the representatives of 562 assist you in your bargaining? A. Yes, sir.

Q. Sir, to your knowledge, is there another group of metal tradesmen who are members of 562, who work for another manufacturing concern here in St. Louis? A. I think there is.

Q. Is that over at Hussmann Refrigerator? A. Yes, sir.

Q. They occupy the same position with 562 as you do? A. I suppose so. I really don't know.

Q. To your knowledge, has any member of your group, the ninety or so, ever made any political contributions to you, or contributions to you, or any other steward or representative of Local 562? A. Not to my knowledge.

Q. You didn't know it was possible to make a contribution over there? A. It never occurred to me, to be frank.

Mr. Riddle: That's all.

Cross-Examination.

By Mr. Randall:

Q. Sir, are you familiar with the fact that there are three branches of pipefitters Local 562? [973] A. No, sir.

Q. You are not? A. Not three; no, sir.

Q. Well, now, there are two anyway. One is the building and construction trademen? A. Yes, sir.

Q. And the second is the metal trademen. You are familiar with that one? That is yours? A. That is the fabricators, I suppose you are referring to.

Q. And then the third one is the maintenance people down at the brewery? A. No.

Q. You didn't know about that? A. I know the fitters work, but I don't know what they do down there.

Q. I see. In other words, you have never attended the meetings and familiarized yourself with the Constitution and By-Laws of your local; am I correct on that? A. That's right. I haven't attended a meeting.

Q. Now, you say nobody ever asked you people down there to make any contributions to the Voluntary Fund? A. That's right.

Q. And you have never asked any of the people down there to do so? A. That's so.

Q. And what is your rate of pay down there, sir? A. $3.39.

Q. $3.39? A. Yes, sir.

Q. And the Local also has never made any assessment against you people down there? A. No, sir.

Q. The only thing you people have to pay is your $4.00 per month dues? A. That's right.

Q. Which goes principally to the National Association; isn't that correct, sir? A. I think so.

Mr. Randall: That's all.

The Court: Anybody else? Any redirect?

Mr. Riddle: No.

The Court: All right. You may be excused. Step down.

(Witness excused.)

The Court: We will have our afternoon recess. Members of the Jury, please bear in mind the admonition I have given you heretofore in all its details.

[975] (During the recess, Government's Exhibits Nos. 159 through 204 were marked by the reporter for the purpose of identification.)

(Following a brief recess, the further following proceedings were had before the jury:)

Mr. Riddle: If it please the Court, before the witness gets here, I believe that counsel for the defendant will stipulate in the event Pat Stieferman were here, she would testify that Government's Exhibits 166, 165, 163, 160 were records kept by the Voluntary Fund and in the regular course of business.

Mr. Randall: Yes, Your Honor.

The Court: All right.

Mr. Riddle: And based upon that stipulation, Your Honor, the Government asks these exhibits that I have just enumerated be received into evidence.

Mr. London: May we examine them, please?

Your Honor, may we incorporate in the record our objection to these Exhibits 160 through 166, both inclusive?

Mr. Riddle: They are not inclusive.

The Court: It is 160, and skips.

Mr. London: 160, 163, 165 and 166. The same objections that were made to Exhibits 89, 89A-1 and 89A through M.

The Court: Well, how can such an objection lie to a stipulation that these are made and kept in the ordinary course [976] of business?

Mr. London: May we approach the bench?

The Court: Make your objection. You started out there. Make it there.

Mr. London: The same objection also that was made to Exhibits 144 to 156.

The Court: Be overruled. You stipulated that these are business records of the Fund.

(Whereupon Government's Exhibits Nos. 160, 163, 165 and 166 were received in evidence.)

VINCENT JAMES POLITO,

being first duly sworn, testified in behalf of the Government as follows:

Direct Examination.

By Mr. Riddle:

Q. Sir, will you state your full name? A. Vincent James Polito.

Q. Now, are you a member of Pipefitters Local 562? A. Yes, sir.

Q. How long have you been a member of that Local? A. I'd say for the past seventeen years.

Q. Sir, during the past seventeen years, have you been a foreman? A. Yes, sir.

[977] Q. How many of those years? A. Off and on. Sometimes a small job, you are a foreman for a day, a week. Sometimes they are longer jobs and you are foreman for longer times.

The Court: Well, Mr. Polito, over what period of time in the last seventeen years? Has it been six years? Three years?

The Witness: Oh, I'd say in the last—I'd say within the last ten years.

Q. (By Mr. Riddle) Sir, referring to the job at Pilot Knob, Missouri—— A. Yes, sir.

Q. Are you familiar with that project? A. Very familiar with it.

Q. Were you a foreman on that job? A. I was the general foreman on the job.

Q. And for what period of time? A. From the start of it to the completion.

Q. When was it started, and when was it completed? A. That is, like I say, I am not too familiar with the actual dates of the beginning of the job down there. As near as I can recall, it started in about '66.

Q. What month? Do you remember? A. No. I'd be lying if I told you what month. As near [978] as I can remember, it was in towards the fall.

Q. Fall of '66? A. Yes.

Q. When was it completed? A. About three months ago, sir, approximately.

Q. All right. Now, on this job, approximately how many people worked under your supervision? A. In the neighborhood of about a hundred twenty-five to a hundred thirty men.

Q. Sir, who assigned you to that job? A. Who assigned me to the job?

Q. Yes. A. Actually, my business agent.

Q. And who is he? A. Ed Steska.

Q. Sir, the people that worked under your supervision down there, do you know who assigned them to that job? A. Well, they were actually men that were working for me that I had recommended for the different positions.

Q. Well, does this include the rank and file of the—— A. Oh, yes, that's rank and file men.

Q. You recommended, and they were signed in by the hall or by the business agent? A. Well, by both parties. Actually, the contractor was [979] well pleased with the men that we had picked for these jobs.

Q. Sir, on the job, just roughly what percentage of the men were from Local 562? A. I'd say approximately about half.

Q. About half of them from 562. And the others were from other locals around the country? A. Other locals; yes, sir.

Q. Now, in the fall, or I should say latter part of August, or early part of September of 1967, just about a year ago, did you have need for some additional pipefitters? A. Well, you always need pipefitters, sir.

Q. Well, at that time, did you have a greater need than normal? Did you make a request to have some additional pipefitters sent down to that job to work for you? A. I probably did.

Q. Well, to refresh your recollection, along about that time did you make a request for some additional pipe-

fitters, and a sizable number of them were sent in from San Francisco? A. I probably did.

Q. Well, I'm asking you if you did. Can you tell? A. I can't say that I asked for where they come from. I just put in a request for men.

Q. Yes, sir. Did you put in a request for some men? A. Yes, sir.

[980] Q. And where did you put your request in to? A. First I put my request in to the company, and they told me to go ahead with the man power. Then I notified my business agent that I needed X number of men, whatever the amount of men that I——

Q. All right. Your business agent was Ed Steska? A. Yes, sir.

Q. Did you tell him how many you needed? A. Told him as many as I could get at that particular time, if it is the time I was thinking about.

Q. At that time, were you hard pressed for additional pipefitters? A. Oh, yes.

Q. Really needed them? A. Always need pipefitters.

Q. Well, at that particular time, did you need them more than normal? A. Well, there are certain phases of a job that you have to go through, and there's times that you actually need more men than you do at the beginning of a job, and when you get to the point where this equipment starts coming in, why you need more men, and by talking that way, I think you are trying to confuse me. I'm trying to lay out how a job actually goes. When equipment comes on in, and there's pipe [981] that has to be done, and you try to beat the weather, elements, and everything else, I probably needed everybody that I could possibly lay my hands on.

Q. And you told your business agent this? A. I didn't use those exact words; no, sir.

Q. All right, sir. Now then, at that time, did you get a number of men from the west coast, the San Francisco area? A. Yes, sir.

Q. And what would there be? About fifteen or twenty of them? A. I'd say in that neighborhood, sir.

Q. Twenty-one, to be exact? A. I couldn't give you—I never keep figures. I wouldn't know.

Q. Do you remember them by name? A. Well, earlier today up in your office, you had called off some, and there was names that I didn't remember, to be truthful about it; just prior to coming here. You had called off a bunch of names, and I remembered them, and I told you then that there was some of them that I didn't remember, and there was no sense in my lying to you then.

Q. And you are not going to lie to me now? A. I am not going to lie to you now.

Q. Let's go down the list. Bailey? [982] A. Bailey. Yes, he died.

Q. Bates? A. Bates.

Q. Brillhard? A. Brillhand.

Q. Does that mean you recognize the name, or you don't? A. I recognize the name, sir.

Q. Dittman? A. Yes, sir.

Q. Fines? A. Yes, sir.

Q. Garcia? A. Yes, sir.

Q. Griffin? A. Yes, sir.

Q. Hall? A. Yes.

Q. Harrison? A. Yes.

Q. Hess? A. Yes.

Q. Jones? A. Jones was one I told you that I don't recall.

Q. All right. OK. Jones you don't recall? [983] A. No.

Q. McEvilly? Do you remember him? A. Yes, sir.

Q. He was one of them? A. Yes, sir.

Q. McGrath? A. Yes, sir.

Q. Ray? A. That was another one, like I say——

Q. You don't remember. Reed? A. Reed is another one that I wouldn't say yes or no on, because just like I say, I'm not sure. He probably was there, but I actually don't remember the name.

Q. What about Mr. Roach? A. Yes.

Q. Scarborough? A. Yes.

Q. Washington? A. Yes.

Q. I believe you said then Marva and George? A. Marva and George Washington; that's right.

Q. And Mr. Williams? A. Yes. There were two brothers. That was the reason.

Q. Now, sir, at the time that these boys all came in, [984] do you recall whether or not you asked them to sign a Voluntary Contribution Agreement? A. I think I did.

Q. Well, I would like for you to tell the jury and the Court if you would, to the best of your recollection, whether or not you gave them a Voluntary Contribution Agreement? A. That, I wouldn't—I probably did. I would say yes, that probably I did give them one. And each and every man signed the Voluntary Agreement.

Q. All right, sir. A. When they went to work.

Q. All right, sir. A. With that there, I gave them the——

Q. Just a minute. Let me ask the questions, and you respond to them, sir. After they signed the—Well, we will strike that. Did they sign these cards before they went to work? A. I think they signed them with their W-4 forms. Normally when you do that there, I generally get the W-4 and the state forms, lay them for them, ex-

plain the voluntary situation to them, and the cards are left there. They will sign them, or they don't. Each and every man signed.

Q. Now, sir, on that job, were you the person that was collecting the money each week? [985] A. Yes, sir.

Q. You have been collecting it each week since the job began? A. Yes, sir.

Q. Do you recall if that collection was made on a Monday of each week? A. Sometimes on a Monday. Sometimes I had other duties that took me elsewhere. There were meetings that I had to hold with——

Q. Sir, if you will just answer the question, and then make any explanation you want. A. You talk about specifically every Monday. Is that what you——

Q. Well, yes. A. No.

Q. But generally it would be a Monday morning that you made the collections? A. Generally, yes.

Q. All right. Now, sir, between the time that you gave the cards out to these people from San Francisco and the next collection day, the next Monday—— A. Um hmm.

Q. ——did you have occasion to hear any comments? A. Yes, I did.

[986] Q. From these people, about this Fund? A. I overheard a couple of them discussing the Fund. These here, they said they had their own obligations, which I told you previous that they had their own obligations to their local. These people here are boomers. They go from——

Q. Just tell the Court and jury——

Mr. Daly: I think the witness should be allowed to answer the question, and not be interrupted.

The Court: Well, Mr. Daly, he was asked a question what he heard, and he is explaining what they are.

The Witness: That's——

The Court: Now, just a minute. You answer the questions, and if there is any explanation necessary, you can make it after the answer. You answer the question.

The Witness: All right. Now, what was the question, sir, again?

Q. (By Mr. Riddle) Sir, you heard them commenting about this Voluntary Fund? A. Definitely.

Q. Now, sir, what comments did you hear them make about the Fund? A. Well, if I do that there, then he can't—I can't answer what—these people weren't interested in the Voluntary Fund.

[987] Q. Is this what you heard them say? A. That's right. Due to the fact that they are not in any one spot at any particular time, and that's what I was trying to explain. These people are boomers. They work here today. If they hear a 712 job is opening in Hong Kong, they go to Hong Kong. They don't care about nothing. All they want is the money, and they have their own obligations to their local that they pay into their own dues and stuff like that there, out there where they are from, so with that there then, I called——

Q. Just a minute. Let me ask the questions, please.

Now, about what day of the week was it that you heard them commenting about the Fund? A. I think—You are asking a year ago. I'd say towards about the end of the week. It was close to about Thursday or Friday, or it could have been a Thursday or Friday, or it could have been a Saturday.

Q. Yes, sir. Now then, at the time that you heard them, did you hear them say anything about them not going to pay into the Fund? A. No, I did not.

Q. All right, sir. Now, sir, at that time that you heard them making these comments, did you tell them anything? A. No, sir.

[988] Q. All right, sir. Sir, did you tell them that they didn't have to pay into the Fund? A. I explained that.

Q. Sir, just answer the question. Did you tell them——

Mr. Daly: He isn't allowed to answer the question.

The Witness: They had to be.

The Court: Just a minute. Just answer the question. If you have an objection, state your objection in a proper manner. All right. Let's start over. Ask your question, and you answer. If you have an objection, make it.

Q. (By Mr. Riddle) Sir, my question to you was did you hear them say that they would not pay into the Fund? A. I says, "No, sir."

Q. All right, sir. Now then, my next question was did you tell them whether or not they had to pay, or that they did not have to pay? A. I did not tell them. When I——

Q. Sir, just a second.

Mr. Daly: I object now, Your Honor, to Mr. Riddle interrupting the witness.

The Court: Now, he asked him a question, "Did you tell him that they had to pay or they did not have to pay?"

And he said, "I did not," and that's an answer.

The Witness: Wait a minute, Your Honor. At the [989] beginning——

The Court: That's it. Do you have any other questions?

Mr. Riddle: Yes, Your Honor.

The Court: All right. Proceed.

Q. (By Mr. Riddle) Sir, after you—what was my last question?

The Court: The question was whether or not he said anything to him about whether or not they had to pay

or didn't have to pay, and he said he didn't say anything to them. Now, that's where the situation stands. Now, it is up to you to ask a question.

Q. (By Mr. Riddle) Sir, at that time, did you make a telephone call? A. Might I ask——

Q. Just a minute. Did you? A. Yes, I did.

Q. Who did you call? A. I called my director of the Voluntary Fund.

Q. Who is that? A. Lawrence Callanan.

Q. Did you have a conversation with him? A. I sure did.

Q. Over the telephone? [990] A. Yes.

Q. What did you say to him, and what did he say to you? A. I told him that I had heard several of these people discussing the Voluntary Fund, and he told me not to take any money from them.

Q. All right, sir. Did you go back and tell the fellows anything after that conversation? A. I did not. I refused to take their money.

Q. You refused to take their money? A. That is exactly right, sir.

Q. Did they offer you the money? A. Yes, they did.

Q. Now, did Mr. Callanan tell you anything as to—or give you any reason why you shouldn't take their money? A. Well, Mr. Callanan has got a lot more on his mind.

Q. No, sir. Did he tell you why you shouldn't take the money? A. I follow orders, like you do, sir. When he tells me not to take anything, I did not take anything from them.

Q. Even if they offered? A. That's right.

Q. Yes, sir. Now then, of the other hundred or so people that you had on your job down there, did each

one of them pay each week? [991] A. Yes, sir. Each week, sometimes no, sometimes yes.

Q. Sometimes they caught up from the past week? A. Sometimes.

Q. Was there any other person on the job down there that didn't pay you? A. Not that I can——

Q. Into the Fund? A. No, sir.

Q. Now, there were other people on the job, I believe you said, who were non-members of 562, or out-of-towners; is that correct? A. That's right.

Q. They all paid? A. Willingly, sir.

Q. Yes, sir. Now, over the past few years that you have been a foreman and a steward in a position of collecting money into this Fund, on any other occasion have you been told by Mr. Callanan not to accept money into this Fund? A. Not that I can recall, sir, because I tell you——

Q. All right. Go ahead. A. Because it is just like I say, I generally am out of the state the biggest part of the time. I generally have a small crew. They generally, mostly, are all members, or even with other people, but I have never, this is actually the first [992] time in my life that I've even heard anything about this.

Q. Sir, I'd like you to tell the Court and jury why you feel it was necessary to call this Voluntary payment proposition to Mr. Callanan's attention at that time? A. Well, it is just like I stated to you. He is the head. Now, if I would have went ahead and put down the sheet, which we—by this time everybody knows how the Voluntary Fund is collected, and if it wouldn't have been brought to his attention, who do you think would have got—he'd have thought I went south with the money. That would have been about the extent of it. He says, well——

Q. Is it fair to say that you didn't want to put in a sheet without collections on it without his permission? A. Oh, I wouldn't say that there. I just didn't want him to think that I wasn't collecting my Voluntary, or getting the Voluntary money and not being able to show where it went to.

Q. Sir, you call this Voluntary money? A. Yes, sir.

Q. Are you telling this jury and this Court that you couldn't refuse to accept Voluntary money on your own without checking with Mr. Callanan? Is that your testimony? A. I didn't——

Q. Are you telling this jury and this Court that you couldn't refuse to accept Voluntary payments without checking [993] first with Mr. Callanan? A. Oh, no, no, because if they didn't want to pay, they didn't have to. The only reason we went into it, because here we had men coming in, and I didn't know—it is just like I told you. This is the first time that a thing like this had ever happened, and I wanted to find out what to do, to be truthful about it.

Q. Sir, did you tell Mr. Callanan about this situation? A. Yes, sir.

Q. In order to keep yourself in his good graces? A. Not only in his good graces. He is still the director of our Voluntary Fund.

Q. And also an influential man in the Union? A. Well, he is the Union, to be truthful about it.

Mr. Riddle: Yes, sir. Thank you. That's all.

The Court: There will be some cross-examination.

The Witness: Oh.

Cross-Examination.

By Mr. Randall:

Q. Mr. Polito, as I understand it, when you received this group of men you explained to them the manner

of the Voluntary Fund? A. That is exactly right. That is what I was trying to explain before, sir, when they wouldn't let me say it.

[994] Q. Well, I would like for you now to tell us what you did do, and what you said, please. A. These men were informed that this is strictly a voluntary contribution. Now, they can either sign it, they don't have to sign it, they can do whatever they want to with it.

Now, if they sign it, they pledge. If they don't, it is up to them. Now, these men knew that they were going in. Now, when you'd ask me if I went back when I had heard these men, and run up there and ask them why you didn't, no, I did not, because then they had already signed their card, they gave their pledge. I didn't know what to do, and I needed advice too, like anybody else does.

Q. As I understand it, after they had signed it, you overheard some comments from some of these people? A. That's right, sir.

Q. And those comments, would you tell us what those comments were? A. That they were drifters, to be truthful about it. They had no allegiance actually to the State of Missouri, or to this part of the country. They were just boomers, and they had their own obligations to their own locals.

Q. And having overheard these comments, despite the fact that they had signed the cards, you decided you would call [995] Mr. Callanan? A. Well, naturally, I needed advice. I didn't——

Q. And Mr. Callanan told you if there was any possibility that the people didn't want to volunteer the money, not to take it? A. Not to take it is correct.

Mr. Riddle: I will object to that. This is leading and suggestive.

Mr. Randall: Cross-examination.

Mr. Riddle: This is—Your Honor, this is an unusual situation. He is putting words—it is his testimony.

The Court: Well, I think that this is a member of 562, although I must admit the questioning has been leading and suggestive pretty much all the way through. He's already answered it. Let's get on.

Q. (By Mr. Randall) And, as I understand it, then thereafter you refused to accept any money from these people? A. Yes, sir.

Q. And did you say that some of them came to you and tried to offer you the money? A. Yes, sir.

Q. And you still refused to do it? A. Yes, sir.

Q. And how long did these men work on that job thereafter? [996] A. Until actually our down period when you—I'd say within a month or so of the completion of the job. Some of them, you know, you go down gradually as you come on down when the building is being built. I mean you actually come down with your manpower.

Q. Until—how long did it take to complete the job? What kind of a job was it? A. It was a mine job, sir.

Q. It was a what job? A. Mine. Iron ore for the Pellet Company.

Q. Now, sir, you have been with the Union seventeen years? A. I'd say approximately, sir. Really, I have been a union man for longer than that, but you asked me, they asked me a question of how long, and when I was in Local 562——

Q. Now, sir, during that period of time, the time that you acted as foreman, did you ever hear any other man express any thought that he didn't want to pay into the Voluntary Fund? A. Never in my life, sir.

Q. Now, sir, did you ever tell anyone that it was necessary to contribute to the Voluntary Fund in order to

work? A. No, sir. Because it is voluntary. That's the word.

Q. Did anyone ever tell you, including Mr. Callanan, and Mr. Lawler, and Mr. Seaton? [997] A. No, sir. It is voluntary. It's if I didn't want to pay, I wouldn't pay it.

Mr. Randall (To the reporter): Could I have this card marked, please?

(Thereupon Defendant Union Local 562's Exhibit I was marked by the reporter for the purpose of identification.)

Q. Mr. Polito, I hand you what has been marked Union Local 562's Exhibit I, and I'll ask you if that is the Voluntary Card which you signed? A. That is my signature on it.

Q. And what is the date of that card? A. Ninth month, tenth day and 68. That is yours. Oh, first month—January 11 of '63.

Q. Now, Mr. Polito, how long did that job—I don't know that I ever got it clear how long that job lasted in months, days, or what, out there? A. I think—I don't either, to be truthful about it. I'd be lying to you. I know it lasted well over a year. I was down there for quite sometime, actually, in the beginning, for Sheehan Company, and just went from one phase into the other.

Q. I see. And, Mr. Polito, are you Republican or Democrat? A. I am a Democrat.

[998] Mr. Daly: I have one question, Your Honor.

Cross-Examination.

By Mr. Daly:

Q. Mr. Polito, you indicated that after these men had signed the card, you had this conversation with Mr. Callanan; is this correct? A. That's correct sir.

Q. And he told you not to accept the money? A. That's right, sir.

Q. Were these men put to work there on the job? A. Yes, they were working.

Q. How long did they work on that job? A. They worked all the way up within, some of them, I could use the expression but there is a lady in the house, and I won't use it. They get disgusted. It is just like I tell you here, they hear of other jobs, and they will go on.

Q. You say they worked all the way up til the end. How long was it till the end? A. Well, the end came, I think the job wound up about three months ago. Prior, about a month before that. Say four months ago, they were still working there.

Q. How long would that be? Would that be a year that they worked there? A. Oh, yes. I'd say in the neighborhood of a year.

[999] Mr. Daly: I have no further questions.

The Court: Redirect?

Mr. Riddle: Just one second, Your Honor.

Redirect Examination.

By Mr. Riddle:

Q. Sir, you testified that in answer to one of Mr. Randall's questions, that this was voluntary? A. Um hmm.

Q. And if you didn't want to pay, you wouldn't pay? A. That's right.

Q. Now, you say you have been around this Union for about seventeen years? A. Longer than that, sir. I have been around this——

Q. And did you say Mr. Callanan was the Union? A. Well, when I say the Union, he is the head of the Union. He is, sir. He is my business manager as well. Now, I don't know that Mr. Callanan, when I have a little something I have to do, we have a staff of business agents. I don't go—I don't go to Mr. Lawler, who is our assistant business manager. When I call on the phone, I generally work under—that part of the country down through there, I generally work under Mr. Steska. If I have a problem and Mr. Steska isn't there, I have other business agents there that advise me on different things.

[1,000] Q. Yes, sir. Sir, have you ever tried to skip or pass a payment into this Fund? A. Well, that would be just like missing a collection in church too. I don't——

Q. Have you ever failed? A. Not to my knowledge, that I have ever skipped. I might have. If I did, it wasn't done intentionally.

Q. Yes, sir. Sir, who has the authority to make you a foreman? A. That there lies between several people.

Q. The Union has a very substantial part to play in that decision? A. Also, it could, too, sir. They have to have a mutual understanding on that. They are not going to get Joe Blow from out on the corner over there and say that here—they want a capable man that is going to do them a day's work, and see that they get a day's work.

Q. Sir, who could, in your opinion, reduce you from a general foreman to a journeyman? A. I could get fired tomorrow by Corrigan Company.

Q. What about by your Union? A. My Union?

Q. Could he pull you in off the job? A. If I was negligent in my duties. If I was negligent [1,001] in my duties and if they didn't think that I was capable of handling that there job, no.

Q. They could pull you off? A. Oh, yes, sir.

Q. Sir, have you ever been short on paying your regular dues and assessments to the Union? A. No, because that there is something altogether different than the Voluntary.

Q. You have always voluntarily paid it too, haven't you? A. Yeah.

Q. You voluntarily pay both of them, don't you? A. No. One is a Voluntary Fund. The other is from my paycheck, sir.

Q. Sir, my question is, do you voluntarily pay into your assessment, into your regular dues? Do you voluntarily pay that? A. That there comes out of our check, sir, if that is what you are referring to.

Q. Yes. A. If you are referring to the other agreement, that I had my stamp taken out of—my money for the stamps taken out, that comes out of my check.

Q. That is paid by you voluntarily? Nobody forces you to pay that, do they? [1,002] A. It is taken out.

Mr. Riddle: That's all.

A. It is taken out by the company. That's what I am——

The Court: Any other cross-examination?

Mr. Randall: No, Your Honor.

The Court: Step down.

(Witness excused.)

* * * * * * *

[1,011] **EDWARD J. STESKA,**
having previously been sworn, testified as follows:

The Court: You have already been sworn?

The Witness: Yes.

Direct Examination.

By Mr. Riddle:

Q. Sir, you are the same E. Steska that previously appeared as a witness? A. I am.

Q. And just in case the record wasn't clear, are you an officer of Local 562? [1,012] A. I am. I'm the president of the Local.

Q. How long have you been president? A. Approximately eight years.

Q. Have you held any other office other than president for the eight-year period of time? A. Not an elected office; no, sir.

Q. Well, any other committee or executive position? A. I'm a business representative.

Q. Yes, sir. Sir, I ask you if you are familiar with this Voluntary Political Fund? A. Yes, sir.

Q. Now, sir, do you know what was being paid into that Fund by members of Local 562 on January the 1st, 1963? How much per day for an eight-hour day worked? A. I believe it was 50 cents per day.

Q. And on or about that date, was there an increase in the amount paid into that Fund? A. On what date now?

Q. January 1st, 1963? A. No, sir, not January 1st, 1963.

Q. Well, was there an increase thereabouts up to $1.00 per day? A. It's possible; yes.

Q. Sir, by "it's possible," what—— A. We started.

[1,013] Q. Sir? A. Yes, sir.

Q. You were starting to answer the question or say something. A. Well, it doesn't make any difference.

Q. All right.

(Thereupon, Government's Exhibits Nos. 208 and 209 were marked by the reporter for the purpose of identification.)

Q. I will show you what's been marked Government's Exhibits 208 and 209, and ask you to examine them and see if that refreshes your recollection as to what the rate was of payment into that Fund in January of 1963? A. In January of 19—week ending January 6th, at that time it was still 50 cents per day.

Q. All right, sir. A. The following week, week ending January 13, 1963, is when the increase went into effect.

Q. And the increase at that time was up to what amount? A. From 50 cents to $1.00.

Q. All right, sir. Sir, how long did the amount of $1.00 stay in force and effect, up until what date? A. I don't recall the exact date. It would have probably been sometime later that year.

Q. I am talking about the payments into the so-called Voluntary Fund now. [1,014] A. I don't recall the exact date.

Q. Well, sir, to refresh your recollection, do you recall that there was a change from that $1.00 per eight hours worked per day, on or about January 1st of 19 and 66, when it was decreased to 50 cents per day? A. I recall it decreased, but I don't know exactly what date it was. There was a decrease in the contributions into the Voluntary Fund.

Q. Well, was this on or about January of 19 and 66? A. It would have been approximately that same time period.

Q. And was it about the same time that the rate of the assessments, the regular Union assessments, increased? A. I believe approximately the same period.

Q. And the period you are talking about would have been in January of '66? A. Yes, sir.

Q. All right, sir. Now then, since January of '66 has there been a change in the rate, namely 50 cents per day for an 8-hour day worked? A. No, sir.

Q. Sir, I will show you what has been marked as Government's Exhibit No. 205, being a chart that has been prepared, and ask you if this chart, with the graphs that appear on it, accurately and fairly represent the dates and [1,015] the amounts paid into the Pipefitters Voluntary Fund for regular 562 members? A. Yes, it appears to be fairly accurate.

Q. And is it accurate of your testimony? A. Yes, to the best of my ability, it is fairly accurate.

Mr. Riddle: All right. With that, Your Honor, the Government offers into evidence it's Exhibit 205, and asks that it be received.

Mr. Randall: May I look at it?

The Court: Yes.

(Mr. Riddle showed Exhibit to defense counsel.)

Mr. London: May we approach the bench for a moment?

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. Daly: We will object to the introduction of this exhibit, Your Honor, for the reason that in the middle of the exhibit, which is a graph, the Government has written in the words "Daily Payments," and we don't feel, by the

evidence, that these were payments as such, and we don't feel there has been a proper foundation for the question.

The Court: In what respect has there been a proper foundation?

Mr. Riddle: The man has testified what the payments [1,016] were per day for eight hours' work by regular members of Local 562. His testimony has been specific on that.

Mr. London: As I recall his testimony, he was rather vague about when the change did occur.

The Court: Mr. London, he was just this vague, that he said and was asked if it was increased about January 1st, 1963, and he said, "Well, I know there was an increase," and he was shown two exhibits, and he said, "Yes, that's about right," and then he was asked if it was decreased about January 1st, 1966, and he said, "Yes, to the best of my memory, it was decreased to 50 cents on January 1st, 1966."

That is not being very indefinite.

Mr. London: It is irrelevant and immaterial, as far as any of the defendants are concerned. There has been no showing that this exhibit is in any way connected with any of the defendants.

The Court: The purpose of the exhibit is to show what the evidence has been.

Mr. Riddle: Yes.

The Court: The objection will be overruled.

(Whereupon Government's Exhibit No. 205 was received in evidence.)

(Thereupon the trial was resumed before the jury as follows:)

[1,017] (Exhibit was placed upon an easel.)

Q. (By Mr. Riddle) Now, sir, again referring your attention to the payments into the allegedly Voluntary Fund, or Pipefitters Voluntary Fund,——

Mr. Daly: I will object, Your Honor. Improper question, leading and suggestive.

Mr. Riddle: I haven't even completed it, Your Honor.

The Court: Well, the only objectionable thing that I have seen so far is, of course, the inclusion of the word "allegedly".

Mr. Riddle: All right, sir.

Q. (By Mr. Riddle) Sir, again directing your attention to payments into the Voluntary Fund,—— A. Mr. Riddle, could I——

Q. And with particularity, the payments into the Fund of non-562 members, that is, out-of-town members, sir, do you know what the rate of that payment for an eight-hour day was from January 1, 1963, up until October 12th of 19 and 63? A. Well, first, Mr. Riddle, I'd like to correct my statement. We talked about payments. These were contributions that were voted on by the entire group of people who were contributors to those. They were not payments as such. They were contributions.

Q. Just a second. I am talking about the monies [1,018] received. My question to you, sir, is was the amount of contributions, if you want to call it that, or the amount of money received from out-of-towners, at the rate of $1.50 a day from January 1, 1963, up until on or about October 12, 1963? A. Mr. Riddle, I'd like to refresh my memory. I know you have the records there, and I'd like to take a look at them to verify that.

Q. All right, sir.

(Thereupon, Government's Exhibits Nos. 210 and 211 were marked by the reporter for the purpose of identification.)

Q. I will hand you what has been marked Government's Exhibits 210 and 211, and ask you to examine them and see if they refresh your memory? A. Yes, sir.

Q. Do they refresh your memory as to what the rate was from January 1, '63, up to October 12, 1963? A. Well, I don't know what the period was up to October 12, but this contribution report here was ending, the week ending the 20th and 27th. At that time, it was a dollar per day. They voted on a contribution of a dollar per day.

Q. I am talking about the out-of-towners, sir. At that same period of time, the other than local members of 562 were a dollar fifty cents per day.

[1,019] Q. All right. That's $1.50 per day for out-of-towners from January 1, '63, to October 12, '63, was $1.50 per day for an eight-hour day worked? A. Well, this was October 20th, so it would have been at least some time beyond October 12th. The report here is October 20.

Q. So it would be up until about the middle or so of October? A. Well, all I have got is the report of October 20th, and so it would have been somewhere in that period.

Q. Between the 12th and the 20th? A. Well, as of the week ending the 20th, it was still, the contributions were $1.50 per day on this report.

Q. Sir, beginning on or about October, somewhere between the 15th and the 20th, did the payments from out-of-towners, you say voluntarily paid, increase to about $2.00 per eight hours a day worked? A. There was an increase; yes, sir.

Q. Up to $2.00? A. I believe that was the amount they voted on; yes, sir.

Q. And prior to that, it was $1.50 a day? A. Well, yes, sir. The contributions prior to that were $1.50 per day. [1,020] Q. All right. From January of '63 up until October, between the 12th and the 20th, of 1963 was $1.50 per eight-hour day? A. That's right.

Q. And at that time it was raised, the contributions were raised to $2.00 per day for eight hours worked. A. That's correct.

Q. All right, sir. I'll hand you what has been heretofore marked as Government's Exhibit 206, being a charted graph that has previously been prepared, and ask if this graph or this chart, an exhibit, accurately portrays and represents your testimony as to the rate of pay for out-of-towners into the Pipefitters Voluntary Fund? A. Yes, sir, that was the contributions—I object to the word paid. I mean there was no payment involved. It was contributions.

Q. All right, sir. But are these the correct dates? A. The figures, I would say, are fairly accurate.

Q. Fairly accurate? A. Well, we still haven't determined what part of October this went into effect, but it was in that period of time.

Q. All right, sir. Otherwise, except for knowing the exact date in October, it is accurate? [1,021] A. Yes, sir.

Q. All right, sir.

With that, Your Honor, the Government offers into evidence its Exhibit No. 206, and asks that it be received.

Mr. London: May we just renew the same objection as made to 205, please?

The Court: The objection will be noted in the record. It will be overruled, and the exhibit will be received.

(Whereupon, Government's Exhibit No. 206 was received in evidence.)

Q. (By Mr. Riddle) Now, sir, with respect to the regular dues and assessments paid into your Local 562, what was the rate that was in effect on January 1 of 1963? What was a regular member of 562 paying into your Union as dues on January 1st, 1963? A. I believe it was prior to our checkoff system.

Q. Well, sir, to refresh your recollection, was it a straight 50 cents a day prior to the checkoff system? A. It was an amount of money per hour, per eight hours. If at all possible, I'd like to refresh my memory if I am accurate here. If you have those records, I'd like to take a look at them.

Q. Very well, sir. Do you recall, of your own [1,022] knowledge, what the rate was prior to the settlement of the strike when an assessment went into effect? Was it not 50 cents a day? A. I believe it was; yes.

Q. All right, sir. It was 50 cents a day up until what time? A. Up until the conclusion of our contract, and we negotiated a new contract in 1963, and I would say approximately sometime in the beginning of October, 1963, our checkoff system went into effect.

Q. All right, sir. A. For members of Local Union 562.

Q. Then about October 1, 1963? A. Yes, sir. That pay period which fell in that first week in there.

Q. And this 50 cents a day that had theretofore been in effect was changed, and it increased, and instead an assessment became in effect? A. That's correct.

Q. And the assessment at that time that was placed in effect was two and one-half per cent of the gross wages? A. That's correct.

Q. Per day? A. Per day. Per 8-hour day.

Q. All right, sir. [1,023] A. Or per gross day, rather. It was based on the gross pay. Two and a half per cent.

Q. Two and a half per cent? A. Yes, sir.

Q. All right, sir. Now, based upon—strike that question. This two and a half per cent assessment stayed into effect for a considerable period of time, did it not? A. Yes, sir. I don't recall exactly how long, but it was on for a period of time.

Q. All right, sir. For at least a year and a half, or more? A. Pretty close to it; yes.

Q. Yes, sir. Now, based upon an assessment of two and a half per cent, a regular journeyman working on a St. Louis job for a forty-hour day——

The Court: Forty-hour week.

Q. Forty-hour week. Excuse me, Your Honor—Would make a payment of how much per day? A. Well, it would be based on his wages per day, because it was two and a half per cent of his gross pay.

Q. Yes, sir.

(Thereupon, Government's Exhibit No. 212 was marked by the reporter for the purpose of identification.)

Q. I will hand you, sir, what's been marked Government's [1,024] Exhibit 212, and ask you to examine it and see if that will refresh your recollection as to what the payment per day would be for a regular journeyman member working on a St. Louis job for a 40-hour week? How much would it be per day? A. This is broken down per week here on the report.

Q. All right. How much would it be per week? A. Based on the journeyman's wage rate, which at that time—this is the payroll period ending December 8, 1963—the journeyman wage rate at that time was four dollars seventy-two and a half cents on a 40-hour week, his gross wages were $189, and his assessments to the local union was $4.73.

Q. Now, sir, $4.73 per week would amount to approximately 95 cents per 8-hour day, would it not? A. Yes, sir, that would be fairly close.

Q. All right, sir. Now, this is still on the basis of a regular journeyman working on a St. Louis job and for a 40-hour week. That rate stayed in effect for how long a period of time? A. Well, like we discussed before, I would say approximately a year, or beyond a year.

Q. Now, sir, did that change in the assessment change on about January 1st of 1966? A. Yes, I believe it did.

[1,025] Q. And the rate of assessment at that time was increased? A. That's correct.

Q. And it was increased to what percentage? A. It was voted on a meeting to increase from two and a half per cent to three and three-quarters per cent.

Q. I see. Now, sir, again, based upon the assessment rate of three and three-quarters per cent for a regular journeyman working on a St. Louis job for a 40-hour week, that person's assessments would amount to how much per day or per week? A. Well, there, again, it would be based on the three and three-quarters per cent of his gross pay.

(Thereupon Government's Exhibit No. 213 was marked by the reporter for the purpose of identification.)

Q. I will show you what has been marked as Government's Exhibit 213, and ask you to examine it and see if you can tell by looking at it how much per week such a journeyman would be paying as assessments into your local? A. Right. This is the payroll period ending January 7, 1966, at which time the hourly pay rate had been increased from four dollars and seventy-two and a half cents to four dollars and eighty-two and a half cents, based on the negotiations of our new contract, so that the wage scale being four dollars and eighty-two and a half,

and the three and three-quarters [1,026] per cent of our working assessment being in effect, the assessment for a 40-hour week would amount to $7.39.

Q. $7.39? A. Yes, sir.

Q. Per week? A. Per week, based on forty hours.

Q. Now, per day, that would amount to approximately $1.48? A. Yes, sir.

Q. Now, that rate of assessment that went into effect in January of 1966, has remained since that date, has it not? A. Yes, sir. The three and three-quarters per cent is still in effect.

Q. All right. I will now hand you what has been marked Government's Exhibit 207, and ask you to examine it and observe it, and tell the Court and jury whether or not it accurately and fairly represents the testimony you have just given with respect to the amount of assessments charged by your Union and paid into your Union Fund? A. By Local 562 members?

Q. Yes. A. Yes, sir. It appears to me to be very accurate there.

Q. All right, sir.

Your Honor, the Government will offer into evidence [1,027] its Exhibit 207, and ask that it be received.

Mr. London: May the record show, Your Honor, renewal of the same objections as made to Exhibits 205 and 206? May I see that one a minute, Mr. Riddle?

May I have just one minute, please?

(Mr. London conferred with other defense counsel.)

Mr. Riddle: Has it been received into evidence, Your Honor?

The Court: He hasn't concluded his objection.

Mr. London: Your Honor, could the Court withhold the ruling on this until we have a chance to ask the witness certain questions to determine whether or not this information is, in fact, accurate?

Mr. Riddle: The witness has said it is accurate.

The Court: He said that it is accurate. He just got through saying it.

Mr. London: Well, there are certain areas that we would like to interrogate relating to this chart.

The Court: Well, I don't know what it would be. Obviously your other objection don't go to this, because this is assessments on dues, on wages for dues. It has nothing to do with the Voluntary Fund at all.

Mr. London: I understand.

The Court: So your objection to the words "Daily [1,028] Payments," wouldn't be valid, in the Court's opinion. Now, if you have any objection, make it, because it is being offered now.

Mr. London: What we wanted to inquire into is whether the amount of the hourly pay scale has remained the same all the way through the time indicated on that chart, or as to whether or not three and three-quarters per cent would amount to a higher figure. This is the point we would like to establish.

The Court: Well, the last time you asked him about the pay scale, as I recall his testimony—and I don't know—it was $4.92. Was that your last testimony?

The Witness: Yes, Your Honor. Four dollars ninety-two and a half, with the record we just looked at.

The Court: Is it the same now? Is that what you are——

The Witness: No, sir. It has increased.

Mr. London: This is the point, Your Honor.

The Court: It is five what?

The Witness: Five dollars and sixty cents now.

The Court: OK.

Mr. London: I think, from that information, that this chart wouldn't reflect that information.

Mr. Riddle: Your Honor, I can ask the witness just one clarifying question, and I think that would answer it. [1,029] The increase in the pay scale would only change the per day payments a penny or two? A. Well, Mr. Riddle, what it would reflect is an overall, because it is based on three and three-quarters per cent of gross pay. Now, since it is four dollars and ninety-two and a half, which was in effect on the records that I examined, since that time, based on our new contract, we are now up to $5.60 per hour, which we can figure out what three and three-quarters per cent of that would be, and we can get what it would be here today.

Q. But the change wouldn't be over five cents? A. It would be minimal, based on that, but it would be an amount greater than what we had there, which is true.

Mr. Riddle: Your Honor, in view of that just minimal, still we ask that the exhibit be received.

The Court: It is twenty-one cents, I believe, on an hour at three and three-quarters, isn't it, Mr. Steska?

The Witness: I really didn't figure it out. If we get into mathematics, we can get it right down to a fraction.

The Court: $1.68 as against——

Mr. Riddle: I have here $1.50.

The Court: Yes.

Mr. Riddle: It is not being offered for proof of the exact amount, but it is in the area of $1.50, and I [1,030] believe the witness will so testify.

The Court: All right. It will be received.

(Whereupon Government's Exhibit No. 207 was received in evidence.)

Mr. Riddle: Sir, the Government has nothing—Just a second. The Government has no further questions of this witness.

The Court: All right.

Mr. Randall: Your Honor, we would like to request the grand jury testimony of the witness.

The Court: OK.

Mr. Randall: Your Honor, his testimony is fifty pages long, and if the other attorneys will look at it, I will go ahead and examine if that is all right.

The Court: All right.

Cross-Examination.

By Mr. Randall:

Q. Mr. Steska, you said you were familiar with the Voluntary Fund. Were there meetings held of the Voluntary Fund? A. Yes, there were. There were quite a number of meetings held, periodically.

Q. And were notices sent out? A. Yes, sir.

Mr. Riddle: If it please the Court, this is beyond [1,031] the scope of the direct. This witness was questioned only about rates and payments.

Mr. Randall: Your Honor, what I am getting into is establishment of these rates at the meetings. That is exactly what we are talking about.

The Court: OK.

Q. (By Mr. Randall) Were notices sent out to the members who were contributing to the Fund? A. Yes, sir, they were.

Q. And on these dates that these rates were changed, of the Fund, that is, were the members of Local—looking over here at this one chart——

The Court: I think that is 205.

Mr. Randall: 205, where the members dropped from $1.00 to 50 cents; and over here where the people who were not members of the local went up from $1.50 to $2.00, were meetings held and a vote was taken to determine those changes? A. Absolutely.

Q. And were the notices sent, not only to the members of the Local who were contributing to the Fund, but also to the people who were non-members who were contributing? A. That's correct. To the best of our ability, we tried to get everyone who was a contributor to the Voluntary Fund at these meetings.

[1,032] Q. And were there discussions of the matter, and explanations made at that time? A. Yes, sir, there were.

Q. And, Mr. Riddle has another chart—Where is that other chart?

(Mr. Randall secured chart.)

The Court: That is marked on the side, 207.

Q. (By Mr. Randall) This chart 207 relates to changes in the assessments of the members; is that not true? A. That's correct.

Q. And was it explained to the members of the Fund who were meeting that there were these changes taking place in the assessments of the members? A. Yes, sir.

Q. And was it concluded by the members of the Fund that they would change the rate of the contributions to the Fund by the non-members of the Local in relation somewhat to the assessment?

Mr. Riddle: Please, just a minute. Please the Court. Conclusions; would be an improper phrasing of the question. Whatever happened, a matter of minutes would be the best evidence of that.

The Court: Whatever happened, what?

Mr. Riddle: I say whatever happened, the minutes [1,033] of the meeting would be the best evidence of that. This man is the president of the Local. He is their own witness. The president of one of the defendants in the case. I think any leading and suggestive questions of this witness would be improper.

Mr. Randall: Well, Your Honor, of course he was present—Were you present at the meetings?

The Witness: Yes, sir.

Mr. Randall: He was present, and their minutes don't reflect everything. I am perfectly happy to ask the question in a non-leading manner, if that is——

The Court: Well, I think in view of his position with 562, that even though he's been put on by the Government, I don't think you ought to lead him.

Mr. Randall: All right.

Q. (By Mr. Randall) Now, what was said at these meetings with respect to proposed changes in the contributions to the Voluntary Fund, both by members of the Local and by those people who were not members of the Local, that were working under your jurisdiction?

Mr. Riddle: Please the Court. I want to object to that unless he specifies who said what. Saying what was said

at the meetings by this witness would be calling for a conclusion, giving a roving commission.

[1,034] The Court: I will sustain the objection.

Q. (By Mr. Randall) Well, do you recall who made speeches at these particular meetings, sir? Can you—— A. The Director of the Voluntary Fund made many speeches. I don't recall any of the contributors by name, although there was much discussion at the meetings pertaining to the increases.

Mr. Riddle: If the Court please, that is not responsive to the question, and I ask it be stricken.

The Court: All right. It will be sustained. Just answer the question, Mr. Steska.

Q. (By Mr. Randall) Well, Mr. Steska, can you recall the people who spoke either from the floor or from the platform at the meeting that occurred prior to the changes that took place in the contributions to the Voluntary Fund? Can you recall all of them? A. Not all of them. I can recall myself. I spoke there.

Q. You spoke? A. Yes, sir.

Q. All right. Can you recall anyone else that spoke? A. The Director of the Fund, Mr. Lawler.

Q. Mr. Lawler. Can you recall anyone else who spoke? A. Not offhand I can't.

Q. Do you recall any non-members who spoke at some of those meetings? [1,035] A. Yes, sir, there were some, but I can't recall their names specifically, but there were a lot of discussions by a lot of people, both members of 562 and non-members of 562.

Q. All right. Now, can you recall what any specific person said? Can you recall what you said, or what Mr. Law-

ler said, specifically? A. Well, I probably couldn't give it to you verbatim, but I could give you the feeling that was discussed, what we actually talked about.

Mr. Riddle: I object to the feeling.

The Court: Well, that would be a conclusion or a summary, and I think would be objectionable. I would sustain the objection to that.

Q. Well, can you recall the substance of anything you said? Let's start with you. A. Yes, sir.

Q. All right. Now, would you then relate the substance of what you said? A. We discussed the increases—I discussed the increases of the——

Mr. Riddle: Please the Court, I want to object to what he discussed. He can state, I believe, in substance what he said, but not summarize it or conclude it.

The Court: Mr. Steska, the question was, "Do you [1,036] recall what you said?" Your opening comments, "We discussed—" Now, that is objectionable, and you are directed to answer the question, "What did you say?"

The Witness: Your Honor, I'll try to get it out the best way I can.

I said that with the increase in the work assessments going from two and a half per cent to three and three-quarters per cent would actually have the payments into the Union on our dues structure and our work day assessment increased considerably over and above what we had been paying, and that I felt, as a member and a contributor to the Voluntary Fund, that we may be able to make some kind of an equalization there where our group of people would be contributing into the Voluntary Fund on a voluntary basis, and the people who were actually not members of the Union would be in reality paying a considerable amount less than we would.

Q. All right. And then after the speeches were made, was a vote taken as to with respect to changing the amount contributed by the members? A. Yes, there was a vote taken.

Q. All right. Now, do you recall how that vote was taken? A. I believe it was taken by secret ballot, if I am not mistaken. Almost all of our votes at the Voluntary meeting [1,037] were taken by secret ballot?

Q. Do you recall the result of that vote? A. Yes, sir.

Q. And what was the result? A. It was in favor of decreasing the contributions by Local 562 and increasing the contributions of non-members of Local 562.

Q. Now, the term has been used "out-of-towners." Were all of these non-members out-of-towners? A. You say out-of-towners?

Q. Yes. The people who were not working under the jurisdiction of 562 who were not members of 562, were they all from out of the city?

The Court: Wait a minute. Do you want to start that over?

Mr. Randall: I am sorry, Your Honor.

The Court: You don't have to be sorry, but it just doesn't admit of an answer.

Q. (By Mr. Randall) Were there people working under the jurisdiction of 562 who lived in the City of St. Louis, who were not members of 562? A. We have many people who are referred to in your terminology "out-of-towners," who actually have resided in St. Louis and the St. Louis area all their lives.

[1,038] Q. Are some of them members of other unions? A. Yes, sir, some members of Boilermakers Union here, the Ironworkers Union, the Carpenters, the Plumbers. At

times we have had people from practically every union in the area working as pipefitters.

Q. I see. Now, the increase that took place in the assessments to the members of Local 562 in your new contract, new contract as of October 1, 1963, did those assessments apply to all the members of Local 562? A. Yes, sir.

Q. Well, did they apply to all the trades that you have? Did they apply to, specifically, to the metal trades? A. No, sir. We are talking about the building and construction trades branch of Local 562 and they are the only ones that participate in this contract. It is a building and construction trades contract. When you mention metal trades, that is negotiated on a separate basis.

Q. I see. How many branches do you have in Local 562? A. Ours is a combination local. We have building and construction trades branch, and the metal trades branch, and we have maintenance pipefitters employed by Anheuser-Busch brewery, which, again, is a separate contract.

Q. Does your assessment that we are talking about here apply to the maintenance people down at the brewery? [1,039] A. Yes, sir, they do.

Q. But it does not apply to the metal trades people? A. No, sir, it does not.

Q. And do you hold, when you have meetings of the branches, I mean of your local, do all branches meet at the same time, or do you have separate meetings for branches? A. We usually have separate meetings for the metal trades group, but the maintenance pipefitters from Anheuser-Busch are part of our regular meetings.

Mr. Randall: I see. I believe that is all I have, Your Honor.

The Court: Anybody else?

Mr. London: One point, Your Honor.

Cross-Examination.

By Mr. London:

Q. Mr. Steska, with regard to Exhibit 207, regarding the wage scale—— A. Could I see that?

(Mr. Randall secured the exhibit.)

Q. For the record, Mr. Steska, that is based on an hourly wage rate of $4.95 an hour, I believe you said? A. I believe there has been a change.

Q. Four dollars ninety-two and a half cents an hour; is that what your testimony was, sir? [1,040] A. Yes.

Q. And the present wage rate is five dollars and sixty-seven and a half cents an hour? A. $5.60.

Q. So if that chart were carried to its complete conclusion of taking three and three-quarters per cent of the present gross pay, it would be a figure of approximately $1.68 rather than $1.48 that is indicated on that chart; is that correct, sir? A. That's right, if you figured three and three-quarters per cent of the present wage scale, it would be increased.

Q. And the members of your union, sir, in addition to receiving $5.60 an hour, receive certain payments per hour in welfare benefits, do they not, sir? A. Yes, sir, they do.

Q. Do you know what figure is per hour? A. At the present time, it is two dollars seventeen and a half cents.

Q. So that the total compensation of your members, if you add the $5.60 and $2.17 is $7.77 an hour for your members; is that correct, sir? A. That's correct.

Q. And if, sir, you were to include in this chart the daily payments and dues and assessments on behalf of the [1,041] four hundred foremen who are members of your Union, and some fifty area foremen, that would again have

to change that chart, in view of the fact that they receive a higher pay scale? A. Slightly. We have general foremen who are higher than the area foremen.

Q. Let's take foremen first. What do they receive as an increase over the regular journeymen? A. Fifty cents per hour over the journeyman rate.

Q. And the area foremen, what do they receive? A. Seventy-five cents over the hourly rate of the journeymen.

Q. And your general foremen? A. One dollar per hour over the journeyman rate.

Q. And all of these figures would have to be taken into consideration in computing the three and three-quarters per cent of the assessments, as that chart would indicate? A. It would.

Q. And that would substantially increase the amount that is paid in in dues and assessments per day; isn't that correct, sir? A. That's right.

Mr. Randall: That is all, sir. Thank you.

I'd like at this time, Your Honor, to renew the [1,042] objection to Exhibit 207.

The Court: Same ruling.

Redirect Examination.

By Mr. Riddle:

Q. Sir, Mr. Randall asked you about the meeting that occurred on or about October 15th of '63. Was the meeting—— A. Yes, sir.

Q. ——was the meeting which you referred to, at which you spoke, and which you testified to in substance as to what you said, was this meeting somewhere along about the first week or two of October of 1963? A. It would have been sometime prior to that, I would imagine. We have

probably the exact date of the meetings, because they were sent out written notices, so if we have to tie the exact date down, I am sure that could be done. I don't recall the exact date, but it would have had to have been prior to that.

Q. You said at this meeting it was decided that because of the increase in assessments by the regular journeymen that you thought that the out-of-towners should pay more. Was this your testimony? A. No, sir. I didn't think that the out-of-towners should pay more.

Q. Well, what was your testimony? [1,043] A. I felt that the contributions probably by the local people, and there, again, that was only my thought as a contributor to the Fund, could possibly be reduced. But this was all put up to the entire body there. They were the ones that voted on the decreasing. This was only a suggestion of mine as a contributor to the Fund.

Q. Well, I'm talking about the specific discussion of an increase in the Pipefitters Voluntary Fund of out-of-towners, you say occurred about the middle of October '63. A. All right.

Q. Was that increase discussed at the meeting that you are referring to? A. Yes, sir. It would have had to have been, because the increase went into effect there, and the total amount of contributors at the meeting were the ones that voted on the increased contributions and also on the decreased contributions, so everything would have taken place by vote at that meeting.

Q. And at that meeting was the increase voted in on the regular assessments, as indicated in the exhibit over here? A. Oh, no, sir. This is a union meeting here. That had nothing to do with the Voluntary Fund meeting. We never had joint meetings at all. Everything was completely separate.

Q. You weren't an officer in the Voluntary Fund? A. No, sir. But I was a contributor, and felt I had a [1,044] voice in any discussion that went on, as a contributor.

Q. Did anybody talk besides you as president of the Union and Mr. Lawler as general manager of the Union? A. Yes, sir, Mr. Riddle, but we were asked to be specific as to who they were, and offhand I can't recall them by name, because there was a lot of discussion at our Voluntary Fund meetings, and to pinpoint names at this time, I just couldn't do it. I don't recall who they were, specifically.

Q. Well, was one of the considerations that, because your regular members indicated over there in the chart to your left, were paying more, namely, a dollar a day more in October '63, that that should have some bearing on what the out-of-towners should pay into the Voluntary Fund? A. Should have some bearing as to what they should pay? Well, we are talking about contributions now. It just so happens that there is a parallel drawn in here.

Q. Yes, sir. A. The contributions are based on voluntary, or members wanting to voluntarily contribute, and other people wanting to voluntarily contribute, not based on any wage scale, or anything like that. It just so happened that a parallel has been drawn through here, and we keep going back that there is a synonym drawn there, and we don't have that.

Q. Yes, sir. In speaking of this parallel, on January [1,045] 1st of 1966, your regular members had a decrease in their voluntary contributions from $1.00 to 50 cents a day on about January 1st, 1966? A. Yes, sir.

Q. Now, then, on or about January 1st, 19 and 66, the daily payments from assessments into the Union were increased almost precisely the same amount, weren't they? A. Yes, sir; fairly close.

Q. So that the individual union members would be paying at the end of this month, January of '63, or '66, rather, he would be paying the same amount of money? A. He would probably be paying more. The member of 562 would be paying more than non-members.

Q. But this parallel you are talking to, or talking about, would indicate, I believe, sir, that this increase in assessment into the Union was offset by a decrease in exactly the same amount into the Voluntary Fund? A. But also, Mr. Riddle, you can see that progressively now it has increased, and there has been no increases in the voluntary contributions by either members or non-members.

Q. You say it was progressively increased? A. That's right.

Q. But the assessment hasn't increased? A. No. The percentage has remained the same, but the [1,046] wages have increased.

Q. But this line would go up just slight above $1.50, maybe one sixty-five? A. I believe someone had it figured here, it was $1.67, or something like that.

Q. Yes, sir. You say these decisions were made at the union hall? A. Not at the union hall, no, sir. When I say at meetings, the meetings have taken place at the Electricians' hall, which we rent. The Voluntary Fund rents it. We have had meetings at the Teamsters' hall which are, again, no meetings, let me state, no meetings of the membership ever took place at our union hall. It is too small. We have our offices there, and a school. We have never had any union meetings at our hall.

Q. Now, sir, on the date in October, the first two weeks of October, 1963, would you say that in-towners and out-of-towners were present? A. Yes.

Q. How did the out-of-towners vote on this increase from $1.50 to $2.00? A. We didn't split up the Voluntary. We took a vote as all contributors. They all voted indi-

vidually. To us there was no distinction between out-of-towners or 562 members. [1,047] They were all contributors to the Voluntary Fund, and as such were entitled to their vote.

Q. Sir, was any out-of-towner heard to complain about the increase on that date from $1.50 to $2.00? A. No, sir, not to my knowledge. I never heard anybody complain at all at any time.

Q. Was there an out-of-towner present? A. Yes, sir.

Q. Can you give me one's name? A. I imagine Ulis Lane probably was present. I know a lot of them, but you hi me now cold with a specific name. I would say Lane.

Q. Ulis Lane was present? A. Uh hmm.

Q. Was he heard to complain about the increase? A. To complain. No. You asked me who was present at the meeting. There was no one complained, to my knowledge.

Q. He didn't complain? A. No, sir.

Q. Ulis Lane. Anybody else that you can remember, beside Ulis Lane? A. I feel—If you'd let me refresh my memory by some of the records, I could tell you more accurately. Right now I am a little confused as to specific names, but I [1,048] could get you a number of them that have been at all our meetings, not only that particular meeting, but a lot of the meetings.

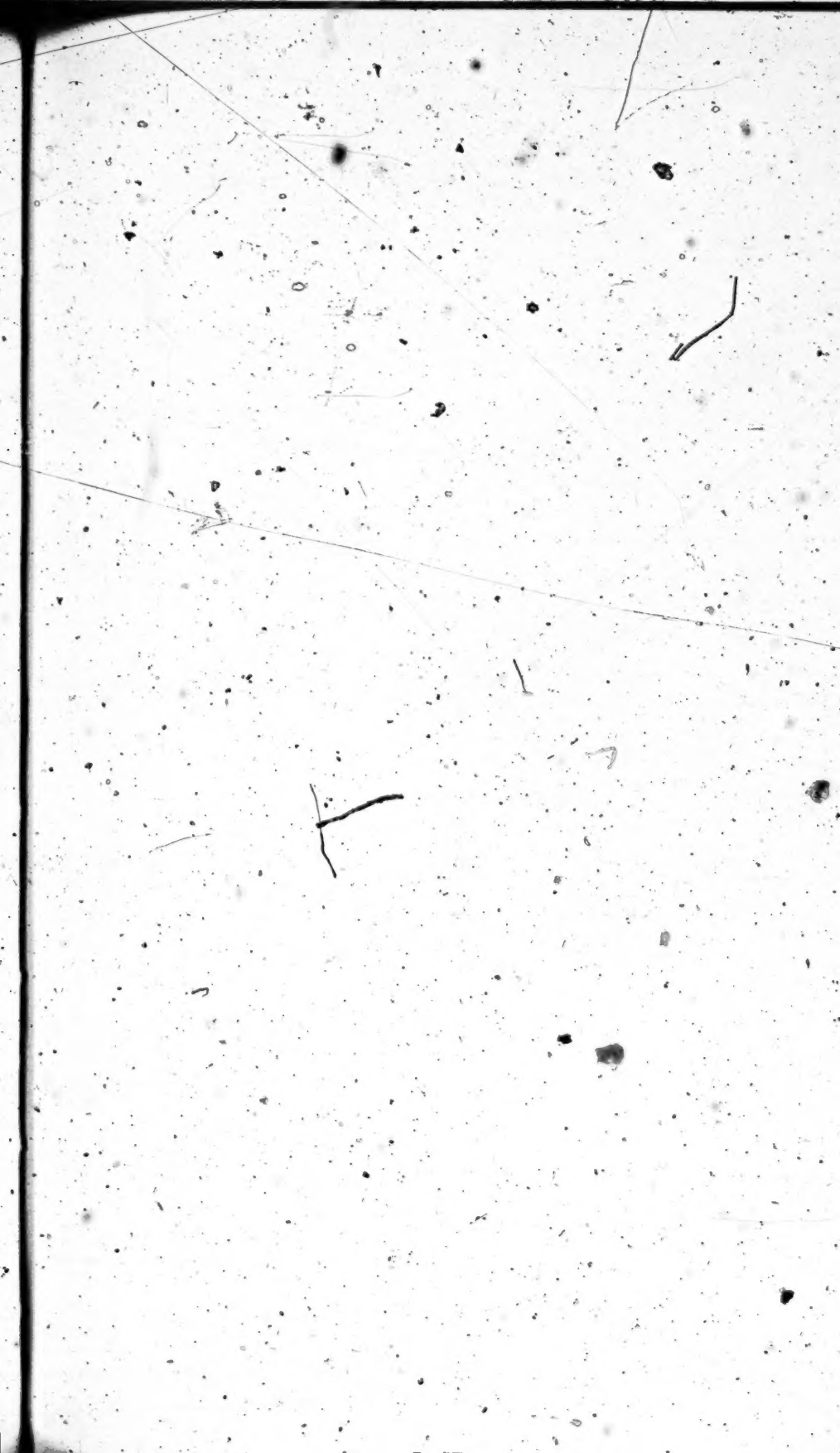
Mr. Riddle: Yes, sir. I believe I have nothing further of this witness.

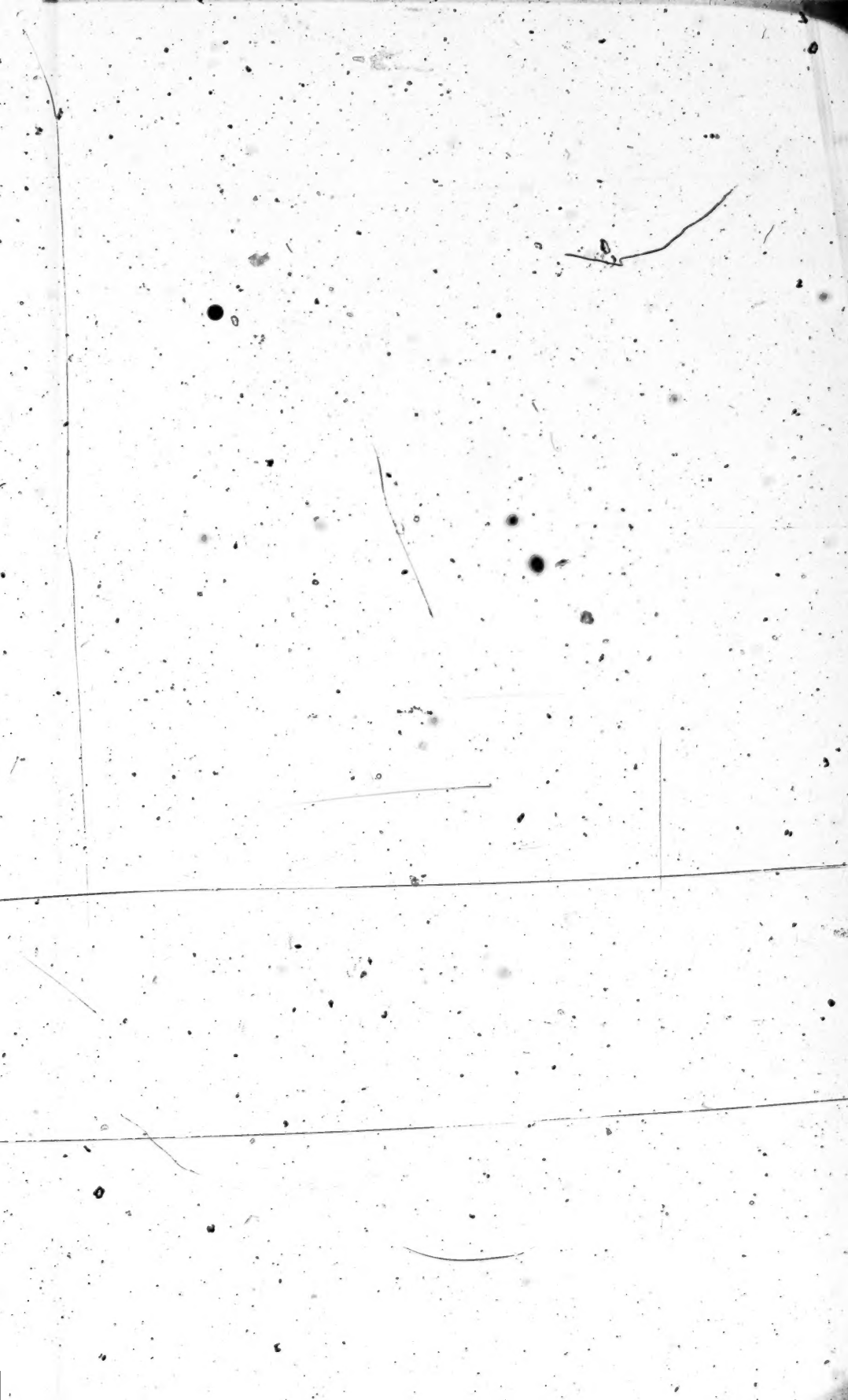
The Court: Anything else?

Mr. Randall: No further questions.

The Court: Step down.

(Witness excused.)





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VOLUME II
APPENDIX

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 70-74

PIPEFITTERS LOCAL UNION NO. 562, Et Al.,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 29, 1971

CERTIORARI GRANTED MAY 24, 1971



In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

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PIPEFITTERS LOCAL UNION NO. 562, Et Al.,
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Mr. Riddle: With that, Your Honor, the Government rests.

* * * * * * *

[1,057] DEFENDANTS' EVIDENCE.

PAT STIEFERMAN,

having previously been sworn, resumed the witness stand and testified in behalf of the defendants as follows:

[1,058] **Direct Examination.**

By Mr. Nangle:

(Thereupon, Defendant Union Local 562's Exhibits J, K, L, M, N, O, P, Q, R, S, T, U, U-1 and U-2 were marked by the reporter for the purpose of identification.)

Q. Mrs. Stieferman, you have testified here before several days ago in the beginning of the Government's case? A. Yes, sir.

Q. And you were the one who kept the records for the Voluntary Fund in 1963 and 1964? A. Yes, sir.

Q. And thereafter you continued to assist in the keeping of the records; is that correct? A. Yes, sir.

Q. I'll hand you what's been marked as Local Union 562's Exhibit J, and ask you to look at this exhibit, if you will, please.

Do you recognize what that is, Mrs. Stieferman? A. Yes, sir.

Q. Would you tell the Court and jury what it is, please? A. This is the ledger that was kept for 1967.

Q. For the entire year 1967? A. No, sir. Up until September. From January through September.

[1,059] Q. And this is part of the record of the Pipefitters Voluntary Fund; is that right? A. Yes, sir.

Q. OK. Now, Mrs. Stieferman, I'll ask you to look at the box which is down here at the bottom here, if you will, please, which has been marked Local Union 562's Exhibit K, and ask you if you can recognize what that is? A. Yes, sir. Those are the contribution reports for—these are for 1963.

Q. Thank you. I'll ask you to look at the box on the top, which has been marked Defendant Local 562's Exhibit L, and ask you if you can identify those records? A. These are the contribution reports for 1964.

Q. And I'll ask you to look at the box at the bottom of that second cart, which has been marked Defendant Local 562's Exhibit M, and ask you if you can identify those records? A. These are the contribution receipts for 1966.

Q. Contribution reports? A. Reports. I am sorry.

Q. For '66? A. These are '65.

Q. And I'll ask you to look at the records which are on the top of that same cart, which are marked Local 562's Exhibit N, and ask you if you can identify those records? [1,060] A. These are contribution reports for 1966.

Mr. Nangle: Is it all right for the witness to remain off the witness stand, Your Honor?

The Court: For the time being anyway.

Q. (By Mr. Nangle) I will ask you to look at the box at the bottom of the last cart, which has been marked Defendant Local 562's Exhibit O, and ask you if you can identify those records? A. Contribution reports for 1967.

Q. Is that for the entire year of 1967? A. No. This would go from January to September.

Mr. Nangle: Thank you. You can get back on the stand, please.

(The witness resumed the witness stand.)

Q. (By Mr. Nangle) I'll now hand you what's been marked Defendant Local 562's Exhibit P, and ask you to look in this envelope and see if you can identify those records? A. These are cancelled checks and bank statements from 1963, January, through September, 1967.

Q. Thank you. I'll now hand you what's been marked Local 562's Exhibit Q, and ask you if you can identify that exhibit? A. These are receipted bills for 1963 and 1964.

Q. What type of bills? [1,061] A. These are paid bills.

Q. Those are the paid bills for 1963 and '64? A. Yes.

Q. Thank you. I'll hand you what's been marked Local 562's Exhibit R, and ask you if you can identify that? A. These are the paid bills for 1965.

Q. I'll hand you what's been marked Local 562's Exhibit S, and ask you if you can identify this? A. These are the paid bills for 1966.

Q. I'll hand you what's been marked Local 562's Exhibit T, and ask you if you can identify that? A. These are the paid bills until September of 1967.

Q. For the Voluntary Fund? A. Voluntary Fund.

Q. All of these records have been identified for the Voluntary Fund, is that correct, Mrs. Stiferman? A. Yes, sir.

Q. Now, I'll show you what's been marked Local 562's Exhibit U, and ask you if you can identify this? A. These are the Voluntary Fund Contribution Agreements.

Q. I'll show you what's been marked Local 562's Exhibit U-1, and ask you if you can identify this? A. These are also Voluntary Contribution Agreements.

Q. I will show you what's been marked Local 562's Ex- [1,062] hibit U-2, and ask you if you can identify these? A. These are Voluntary Contribution Agreements.

Q. All of these records which you have so far identified this morning were records of the Pipefitters Voluntary Fund, Mrs. Stieferman? A. Yes, sir.

Mr. Nangle: Excuse me just a moment, Judge.

At this time, Your Honor, I'd like to offer in evidence Local 562's Exhibits J through U-2.

Mr. Riddle: The Government has no objection to these offerings, Your Honor.

The Court: All right. They will be received. Do you want to offer A to J?

Mr. Nangle: Yes, Your Honor.

The Court: All right. They will be received.

(Whereupon Defendant Union Local 562's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, U-1 and U-2 were received in evidence.)

Mr. Nangle: Excuse me a moment, Your Honor. May the record reflect that these are Government's Exhibits 1 through 5?

Mr. Riddle: If they are that number, yes.

The Court: Well, if they are Goverment's Exhibits 1 through 5, the record shows that already.

[1,063] Mr. Nangle: Thank you, Your Honor.

Q. (By Mr. Nangle) Mrs. Stieferman, you previously have examined Government's Exhibits I through 5, which I am holding here in my hand. Now, Government's Exhibits 1 through 5, and Local 562's Exhibit J through U-2 were all kept by you; is that correct? A. Yes, sir.

Q. The summary records in later years, I believe you testified before, were kept by you, but not the collection reports. They were accumulated in some instances by others? A. Yes, sir.

Q. I will ask you, Mrs. Stieferman, if during the period of time 1963 through late 1967, if you ever had occasion to confer with anyone professionally about the keeping of these records? A. Yes, sir.

Q. And would you tell the Court and jury who you conferred with? A. You. Mr. Nangle.

Q. Thank you. A. And, occasionally, Mr. Shelton.

Q. And do you recall the first time you consulted me about the keeping of these records? A. I believe it was in '64.

[1,064] Q. And did you confer with me on any other occasions then in 1964? A. Yes, sir.

Q. Do you have any way of expressing how many times that would have been? A. I don't know just how many times, but there were quite a few times.

Q. And you mentioned Mr. Shelton. Who is Mr. Shelton? A. Mr. Carroll Shelton. He is an auditor. He talked about the books several times.

Q. Now, Mrs. Stieferman, did Mr. Shelton and myself advise you about the keeping of these records? A. Yes, sir.

Q. And did you comply with our advice? A. Yes, sir.

Mr. Riddle: I will object to that, Your Honor, as to complying with his advice. This would call for a conclusion. The question could be what advice he gave her, and what she did, and so forth.

The Court: All right. It will be sustained.

Q. (By Mr. Nangle) Mrs. Stieferman, did you have occasion to examine these records in October or November of 1967? A. Yes, sir.

[1,065] Q. And——

The Court: Now, you mean the entire group. I don't know.

Mr. Nangle: Well, I'll identify them, Your Honor.

The Court: All right.

Q. (By Mr. Nangle) Mrs. Stieferman, the Government's Exhibits 1 through 5, and these exhibits that you identified this morning comprise the records of the Pipefitters Voluntary Fund for 1963 through September 1967, I believe; is that correct? A. Yes, sir.

Q. Now, did you have occasion to examine these records of the Voluntary Fund, which would be Governments Exhibits 1 through 5, and Local 562's Exhibits J through U-2, in October or November of 1967? A. Yes, sir.

Q. And do you know what happened to these records in October and November of 1967? A. Yes, sir. The Government called for them.

Q. I see. And did you then have occasion to examine these records again after August 9th of 1968? A. Yes, sir.

Q. And could you tell the Court and jury briefly if there was any difference in the condition of these records [1,066] between the time that you examined them in October or November of 1967 and in August of 1968?

Mr. Riddle: If it please the Court, that would be calling for a conclusion. She can testify as to what shape they were in, and what was in them one time and another, and the jury can determine what differences there was.

Mr. Nangle: I will rephrase the question, Your Honor. Thank you, Mr. Riddle.

The Court: All right.

Q. (By Mr. Nangle) Would you tell the Court and jury the condition of the records in October or November of 1967, please? A. They were kept by years in envelopes with tapes marked on each envelope, the amounts that were in each envelope and put, kept in boxes for that particular year.

Q. And were these tapes used in entering the totals in the receipts books, Mrs. Stieferman? A. Yes, sir.

Q. Now, would you describe the condition—would you tell the Court and jury—let me rephrase that.

The Court: Did you look at those envelopes after August 9th?

Mr. Nangle: Thank you, Your Honor. Did you look at the envelopes after August 9th?

[1,067] A. Yes, sir.

Q. What did you find then? A. That some of the tapes were removed, and some of the reports, contribution reports, were in the wrong envelopes, and this type of thing.

Mr. Riddle: I will object to "this type of thing," Your Honor, and ask that that be stricken.

The Court: All right. That portion of the testimony stating "this type of thing," will be stricken, and the jury will disregard it.

Mr. Nangle: Excuse me, Your Honor. I have no other questions at this time, Your Honor.

The Court: All right.

Cross-Examination.

By Mr. Riddle:

Q. Mrs. Stieferman, in identifying these records, as you have for the Court and jury, is there a receipt of records among the various exhibits that you have just identified, that contain payments that were received into the Fund by mail or by people who just came to the office and dropped off their money? A. Yes, sir.

Q. Now, these are separate and apart from the sheets or documents that were received from off the job, from the [1,068] foreman or from the stewards? A. Yes, sir. They are the same type, but they were different. I mean I handled them in the office if they came by mail.

Q. Yes, sir. Or yes, ma'am. The records that I am referring to were prepared by whom? A. In '63 and '64, they were prepared by me.

Q. All right. Well, without going into each detail, what did you enter on these records that we are speaking of? That is now for money that came in by mail, or money that came in by an individual member of the Union, or an out-of-towner? A. The man's name and the amount of either the check or the cash money if he brought it in to the office.

Q. Ma'am, did you maintain a separate ledger for that purpose? A. No, sir. Not a ledger. A sheet, a contribution sheet, just like the same that was used on the jobs.

Q. And how did you label it? A. Office mail.

Q. Office receipts? A. Office mail or receipts into the office. I forgot just what I put, but something similar to that. Office mail, I believe, for the ones that came through the mail, and maybe just office, just simply office for the ones that paid in the [1,069] office.

Q. For a given week, just assume any week during that period of time, you would have in your office the reports and money that came in from the foremen or stewards on the job? A. Yes, sir.

Q. Which would show the names of the people who had paid? A. Yes, sir.

Q. And the amount they had paid? A. Yes, sir.

Q. Then, in addition to that, you had another record which you maintained? A. Yes, sir.

Q. Which contained the names of people who apparently were working that week? A. Yes, sir.

Q. But whose name would not appear on the foremen's or stewards' reports? A. Yes, sir.

Q. All right. So in order to determine from the records you were keeping, in order to determine who all paid

for a given week, it would be necessary to look at both the foremen's reports and the office receipts? A. Yes, sir.

[1,070] Q. And it would be necessary to compare the two to see who had paid, and how much had been paid? A. Well, I'm afraid I don't understand. Like to compare them. The sheets that I kept were necessary to know how much money had come in by mail, and how much had come in in the office, or how many people had paid individually in the office.

Q. Yes, ma'am, but let's assume for any week in question that you have here a list or stack of all of the receipts, or all of the forms and reports that you received from foremen. A. Yes, sir.

Q. And you see on one of these sheets a member by the name of John Brown, and you have got beside his name a zero. A. Yes, sir.

Q. Meaning that he paid nothing to the foreman? A. Yes, sir.

Q. Now then, if you wanted to determine whether John Brown had paid for that week, you would consult some of the other payments, the separate sheets that you prepared there? A. Yes, sir, you could do that.

Q. And if Mr. Brown's name appeared on there, if he made a payment that week, it would appear on that sheet? A. Yes, sir.

Q. So by checking these sheets—— [1,071] A. Yes, sir.

Q. ——you could pick any employee out, or any member for that particular week, and determine if he paid on the job, or if he paid into the office directly? A. If he paid that week; yes, sir.

Q. Now, if you wanted to check and see if he paid for a past week, you could check the records for the past week, and the current records? A. Yes, sir.

Q. If you wanted to check back even three or four months, you could do so by checking these records? A. Yes, sir.

Q. And at the end of any year, if you chose, you could go to these records that you maintained, and could find how many people paid, and you could determine how much every person paid? A. Yes, sir.

Q. These records were kept currently and contemporaneously with the occurrences daily, or weekly, or whenever it occurred? A. Yes, sir.

Q. And these records, all of them that you are talking about, were kept at the union hall, or the union building on Pierce Avenue? A. Yes, sir. 1242 Pierce.

[1,072] Q. And that's the same building where the Union president has his office? A. Yes, sir.

Q. Where Mr. Callanan has his office? A. Yes, sir.

Q. Where Mr. Seaton has his office? A. Yes, sir.

Q. And where Mr. Lawler has his office? A. Yes, sir.

Q. Now, there were other reports kept there, in addition to these, I assume, out at the union hall? A. Yes, sir.

Q. There were records kept of the regular Union assessments? A. Yes, sir.

Q. That were either paid by the individual members, or paid by the contractors or company on the checkoff system? A. Yes, sir.

Q. And they were received weekly, or every—— A. I am not sure how they were received. I imagine it is weekly.

Q. Yes. And they all came in at this same address on Pierce Avenue? A. Yes, sir.

[1,073] Q. Mrs. Stieferman, again referring to these records, at the time that a subpoena was served upon the Union by the grand jury sometime last fall, about ten months ago, do you remember that occasion? A. Yes, sir.

Q. And these records were subpoenaed, and I'm assuming that you prepared in putting them together? A. Yes, sir, I helped.

Q. Now, at that time, was Mr. Beck working there with you also? A. Mr. Beck was working in the Voluntary Fund then.

Q. Yes. At this time you were working over in the Welfare Fund, but keeping the books of the Voluntary Fund? A. I was helping out with them.

Q. Yes. Do you recall a request from the grand jury made, wherein the grand jury requested that a list of those persons who collect the voluntary contributions to the Fund be furnished? Do you remember that request coming in A. No, sir, I don't think so.

Q. Or the request from the grand jury for the names of those pipefitters who do not contribute to this Fund? Do you remember that? A. No, sir.

(Thereupon Government's Exhibit No. 214 was marked by [1,074] the reporter for the purpose of identification.)

Q. Ma'am do you recall whether or not anyone along about the latter part of November of last year, of 1967, if anyone asked you to check through the records and determine the names of any pipefitters who did not contribute to this Fund? A. No, sir.

Q. At any time during 1967, did any member of the Union, any of these defendants, ask you to make such a check of the records? A. No, sir.

Q. Or did anyone ask you to supply the list of the persons who collect the money into this Fund? A. No, sir.

Q. I'll show you, ma'am, what has been marked Government's Exhibit 214, which, by the way, is a copy of a letter. I will need to help you locate the second page of it. This is the second page, and this is the first page.

(The witness examined exhibit.)

Q. Ma'am, you have just looked at the Government's exhibit I handed you, which purports to be a letter, I believe, signed by Mr. Edward Beck.

Mr. London: May we examine the exhibit, please?

Mr. Riddle: Yes, in just a second. And the rest of [1,075] it is addressed to the United States Grand Jury, Federal Building, St. Louis.

Ma'am, my question to you is this: Did you assist in the preparation of this letter in any way? A. No, sir.

(Mr. Riddle handed exhibit to defense counsel.)

Q. (By Mr. Riddle) Mrs. Stieferman, you have identified a great number of records. In order to clarify this point for the Court and jury, among the records that you have identified, does there appear the records of the Callanan Gift Fund? A. No, sir.

Mr. Daly: Your Honor, we are going to object to this irrelevant issue. It certainly is not within the scope of the direct examination.

Mr. Riddle: It is with respect to the records of the Fund. She testified that this is all of them, and I think that this is very much within the scope of the direct questions of this witness.

The Court: Well, she's already answered the question now. I will overule the objection. All right. Let's proceed.

Q. (By Mr. Riddle) Your answer to that was—— A. No.

Q. No. This gentleman by the name of Shelton, whose name you gave to Mr. Nangle in response to a question, he's a [1,076] Certified Public Accountant? A. Yes, sir.

Q. And do I recall your testimony correctly to be that you consulted with him? A. Yes, sir.

Q. About these records? A. About the keeping of the records; yes, sir.

Q. Now, what did you seek? Advice from him? A. No, sir. I talked to Jimmy Nangle. When I asked any questions, I usually asked Mr. Nangle, but I was there when Mr. Shelton was advising on how to keep the records.

Q. Well, now, does Mr. Shelton do the record keeping or the auditing for the Union? A. Yes, sir.

Q. Does he audit and keep the records for the Welfare Fund? A. No, sir.

Q. What records does he audit and keep, or supervise for the Fund? I mean for the Union? A. He audits the Union's records.

Q. That's the assessments? A. Yes, sir.

Q. And dues, receipts? A. Yes, sir.

[1,077] Q. And expenditures of the Union? A. Yes, sir.

Q. Now, ma'am, when you were consulting with Mr. Shelton about the records that you have just identified here today, did you ask him to audit those records at any time? A. No, sir.

Q. Well, did you ask him to run any checks to see if the monies were there, or if the records were adequate? A. No, sir.

Q. Did you ask him to examine your ledger sheets and your—— A. Yes, sir, I showed him the ledger sheets, you know, that I was keeping, and asked him if these were, if he had any suggestions or, you know——

Q. Did he have any suggestions? A. Yes, sir. He suggested several things that I wasn't doing that he thought would clarify it a little bit better.

Q. Is this the only type of advice you sought from him? A. Yes, sir.

Q. Did you ever ask him to make a monthly report, or profit and loss, or receipts and disbursements report? A. No, sir.

Q. To your knowledge, he never did do that with or to these records? [1,078] A. No, sir. Well, he didn't do it until just recently.

Q. That is, within the last few weeks? A. Yes, sir.

Q. Now, a number of the exhibits that you have identified purport to be receipts or vouchers showing payments from the accounts of the Fund? A. Yes, sir.

Q. I'm not clear what your earlier testimony was when you appeared several days ago, but are most of those bills, or were most of those bill paid by you? A. In 1963, all of them were paid by me.

Q. What about in '64? A. In 1964, I might say most all of them were paid by me, and then from then on I did not make the actual payments. I did not write out the checks or the bills then, from '64 on.

Q. Did Mr. Beck write them out at that time? A. Yes, sir.

Q. Ma'am, whatever payroll expenses that the Fund had, did you pay those bills? A. The bill, the checks——

Q. Or the salaries or payroll? A. In '63 and '64, but not after that.

Q. Who was the Director of the Fund in '63 and '64? A. Mr. Lawler.

[1,079] Q. Mr. Lawler? A. Yes, sir.

Q. Did he receive a salary from out of the Fund? A. No, sir.

Q. And he was succeeded as director by Mr. Callanan? A. Yes, sir.

Q. And the date of that was about when? A. 1965.

Q. Mrs. Stieferman, among the records that you have identified, are there any minutes or records of the meetings? A. No, sir.

Q. To your knowledge, there are no such things? A. I don't have them.

Q. Among the records, are there any membership cards or—— A. The Voluntary Fund Agreement cards.

Q. Yes. But is there any card that the Fund ever gave out to its alleged members? Like the card that you have if you belong to a union, or belong to this or that club? A. No, sir.

Q. No such cards as that were ever issued, to your knowledge? A. No, sir.

Q. Now, during the period of time that you were keeping these records, were you ever asked to make a report to a [1,080] committee or to a board of directors, or to anybody, about the Fund? A. No, sir.

Q. Books? A. No, sir.

Q. Or the amount of receipts? A. No, sir.

Mr. Riddle: I believe the Government has no further questions of this witness.

The Court: Mr. Nangle?

Mr. Nangle: I have no questions, Your Honor.

The Court: All right. You may be excused.

The Witness: Thank you.

(Witness excused.)

EDWARD H. FRANKE, JR.,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? A. Edward H. Franke, Jr.

Q. Would you keep your voice up loud enough so that everyone can hear your testimony? Where do you reside,

Mr. Franke? [1,081] A. 5715 Lansdowne, St. Louis 9, Missouri.

Q. And are you married or single? A. I'm married, sir.

Q. Now, what is your business or occupation? A. I'm a pipefitter.

Q. And by whom are you employed, sir? A. By the Thomas J. Sheehan Company, at 4120 Lindell Boulevard, St. Louis.

Q. And what position do you hold with the Sheehan Company? A. I am a general foreman at the Mayfair Riverfront Inn, on Fourth and Washington.

Q. How long have you been on that particular job? A. I have been on that job, January of 1967 I started this job, sir.

Q. And how many pipefitters do you have working under you at this time? A. Right today I have thirteen pipefitters, plus myself.

Q. I see. Now, are you a member of Local 562? A. Yes, sir, I am a member of 562.

Q. And have you ever contributed to the Pipefitters Local 562 Voluntary Fund? A. Yes, sir, I have.

Q. And for what period of time have you been contributing, [1,082] Mr. Franke? A. Ever since it's been in existence, sir.

Q. I see. Now, have you ever collected any money for the Pipefitters Fund? A. Yes, sir, I have.

Q. And was that as a steward, or a foreman, or—— A. That was as a steward or as a foreman, sir; either way.

Q. Are you collecting for the Fund at this time? A. Yes, sir, I am collecting for the Voluntary Fund at this time.

Q. On the job that you are presently working on? A. Yes, sir. I am, sir.

Q. All right then. Are you making contributions to the Fund at this time yourself, Mr. Franke? A. Yes, sir, I am.

Q. Let me ask you, sir, if you are making these contributions voluntarily? A. Yes, sir, I am.

Q. Has anyone ever told you that you had to pay into this Fund? A. No, sir, no one has ever told me that I had to pay into this Voluntary Fund.

Q. And these men you collect from, have you ever [1,083] told any of those men that they had to pay into the Voluntary Fund? A. No, sir, I have never asked any man to pay into the Voluntary Fund.

Q. Now, have you ever attended any of the Fund meetings, or political meetings that they had? A. Yes, sir, I have.

Mr. Riddle: I want to—well, that is all right. Go ahead.

Q. (By Mr. Daly) Are you related, either by blood or marriage, to Mr. Callanan, or Mr. Seaton, or Mr. Lawler sitting there? A. No, sir, I am not.

Mr. Daly: I have no further questions.

What are your politics?

A. I'm a Democrat, sir.

Mr. Daly: Your witness, Mr. Riddle.

Cross-Examination.

By Mr. Riddle;

Q. Mr. Franke, on the job that you are presently conducting—— A. Yes, sir.

Q. ——are there any out-of-towners working on it? A. Yes, sir. At the present time, there's one out-of-town [1,084] man on this job from Local 597 out of Chicago, Illinois.

Q. How long has he been on the job? A. Sir, he's been there on my particular job two weeks. I think this starts his third week, possibly, Monday.

Q. How many others on the job with you? You say about twelve besides he? A. Twelve, besides he, and counting myself, I think there's fourteen.

Q. Who sent him out to the job to work under you? A. Well, to the best of my knowledge we have a riding superintendent, who is Mr. Glen Forristall, also a member of 562, and I was in need of an extra man, and this man had been working for Sheehan, the Thomas J. Sheehan Company, previously on another job at Monsanto, and he was sent to me then as a helping hand on the job that I was on.

Q. And his name is what? A. Robert H. Magee.

Q. You got him by asking the union hall to send him out, I assume? A. I did not ask the union hall. We have this riding superintendent that is over all the Sheehan jobs. His name is Glen Forristall.

Q. And he is a member of 562? A. Yes, sir. And he is my supervisor, so to speak, and [1,085] he sends the men to the jobs now. Sometimes he gets them from the union hall, or he might—in this case he had a job that was, oh, so to speak, maybe slowing down a little bit, and I needed a particular man, and this man was available, and that's how I got him. He sent him to me.

Q. Did he sign one of these contribution cards when he came on? A. He had signed one, sir when he came to the other jobs, sir.

Q. He had already signed one? A. Yes, sir.

Q. How did you know that? A. Because he told me he had, sir.

Q. Did you ask him if he had signed it? A. No. He said that, naturally, with all this discussion going on

about this particular case, it so happened just hear a conversation that this——

Q. That the man had already signed one? A. Yes, or I would say he contributed. I want to retract the statement here now. What he—he actually signed it, not signed, but offered to give me his particular assessment.

Q. Assessment? A. No, sir.

[1,086] Q. Not assessment, is it not? A. No, sir, it is not assessment. Contribution.

Q. Voluntary contribution? A. Yes, sir.

Q. Do you know what an assessment is? A. Yes, sir. We have assessments in our local.

Q. Assessment is a charge for the right—to pay for the right to work and to belong to a union, isn't it? A. We have an assessment, sir, and that is taken out of our pay by the contractors, an obligation to our union, sir.

Q. Sir, do you understand an assessment to be a tax or a payment that you have to pay in order to belong to the Union? A. The assessment that I pay, that comes out of the paycheck, which is my terminology of an assessment. And the other is a contribution.

Q. Why did you use the word assessment just a few minutes ago on this witness stand in front of this Court and jury, sir? A. It's a slip of the tongue, sir, is all I can say.

Q. You use it and refer to it on the job as an assessment, do you not? That is, this so-called voluntary payment, do you not refer to it as an assessment on the job, the same as you did here just a few minutes ago in front of this jury? [1,087] A. No, sir, I don't believe I do. I will tell you the reason why. On this particular sheet that I have, sir, that you keep the records on, it does not say anything about—it says Pipefitters Voluntary Fund.

Q. Voluntary Fund. That's right. That is what the sheet says, but you call it, yourself, and on many occasions, an assessment, do you not, irrespective of what the sheet says? A. No, sir. I don't necessarily agree with that, although I did make a slip of the tongue, but I do not say that I would call it an assessment. To me assessment is something that you have to, you are obligated to pay by either getting a bill for it, or someone has set this schedule up, like we'll say that you pay so much a month, but this is not the case.

Q. You say an assessment is, by your understanding, when someone sets up a scale or an amount to pay by the month for you? Is this what you are saying an assessment is? A. Or some designated—it may be by the year.

Q. It might be by the year? A. Yes, sir. It could be by any——

Q. Do you know Mr. Ed Steska? A. Yes, sir, I do.

Q. He is president of your local union, is he not? A. Yes, sir, he is.

[1,088] Q. Sir, showing you what's been received into evidence as Government's Exhibit 205, I'll ask you to look at that and see if beginning in January of 19 and 63, you began paying a fixed amount into this fund of $1.00 per 8-hour working day? A. I believe that's correct, sir.

Q. And that amount remained in effect at $1.00 for an 8-hour working day from January of 19 and 63 until January of 19 and 66. Is that consistent with your independent recollection of it? A. Yes, sir, I would say that's——

Q. That was a fixed, certain and definite amount, wasn't it? Fixed? A. As a Voluntary Fund, yes, sir.

Q. Yes, sir. And thereafter that certain definite and fixed sum continued to be at the rate of how much per

day for eight hours worked? A. It was then later reduced to 50 cents, sir.

Q. The assessment was reduced to 50 cents? A. No, sir. The Voluntary Fund payment was reduced to 50 cents.

Q. Yes. At that time, you decided to then voluntarily pay 50 cents a day for each and every 8-hour day that you worked? A. Yes, sir.

[1,089] Q. And you continued to pay that ever since? A. Yes, sir.

Q. Sir, before you came to the stand today, weren't you told to be careful to not call these voluntary contributions assessments? A. Sir, I——

Q. Answer my question. Were you told not to call them assessments? A. They are not assessments, sir.

Q. My question, sir, if you would answer it—answer it yes or no, weren't you told to be careful not to call them assessments? A. Yes, sir.

Q. Yes, sir. Who told you that? A. My own men.

Q. Yes, sir. And who are your own men? A. Such men as going to be, probably going to be called in this court.

Q. Sir? A. The men that are in the room, in the assembly room, sir.

Q. Other witnesses out here? A. In the assembly room, and on the job itself. Now,——

Q. These are the people who told you to be sure and not [1,090] call this an assessment? Is that your testimony to the Court and jury? A. Well, sir, I know better than ever to call this an assessment, of my own knowledge.

Q. Well, let's talk about these men that told you not to call this an assessment. When did they tell you this? A. Well, I'll tell you, I try to bear it in my mind that it is never an assessment, and that these men know this also.

Q. Well, if it is not an assessment, and it is clear to everybody that it is not an assessment, according to you why were you and your men talking about it, and why were they telling you not to call it an assessment when you got here on the witness stand? A. Sir, there is no one directly telling me not to call it an assessment. I mean it is just by way of there's been a lot of conversation on jobs, and knowing that the proper name is not assessment. I know it may be that it's been called that, but it is not the proper name for this particular Fund.

Q. You have been told that the proper name for this Fund is Voluntary, haven't you? A. Yes, sir. I have made that out on my own sheets that I kept the amounts of the Voluntary Fund. It is right up on the top, and I shouldn't have never ever used the word.

[1,091] Q. You have been told to refer to this as a Voluntary Fund, haven't you? A. Yes, sir. And it is a voluntary fund.

Q. And you have told your boys, the people working on your job, to always refer to it as a voluntary fund, haven't you? A. Yes, sir.

Q. And you get your instructions from down at the union hall to call it a voluntary fund, do you not? A. No, sir. I got a book from the union hall that says "Voluntary Fund," and that's—I mean it would just be like if I had a book for a gas bill, or anything like that. It says it right on the top of the sheet, sir.

Q. Sir, if they told you to call this book a baseball bat, even though it is a book, would you call it a baseball bat? A. No, sir, not unless it is——

Q. And calling it a baseball bat wouldn't make it that, would it? It would still be a book; is that right, sir?

Mr. Randall: Your Honor, I'll object to this as argumentative.

The Court: It is cross-examination. Let's proceed.

Q. (By Mr. Riddle) Now, sir, there was a period of time in 19 and 66—Can you see the exhibit, the chart, sir?

The Witness: I can see it pretty well, sir; yes, sir.

[1,092] Q. ——a period of time in 19 and 66 that the money you were paying went for a particular purpose. Do you remember that? What is called the Callanan Gift Fund?

Mr. Daly: Your Honor, may we renew our objection? This is certainly outside of the scope of the direct.

The Court: No. It is within the purview of the direct, and other items. It will be overruled.

Q. (By Mr. Riddle) Do you remember paying into the Callanan Gift Fund? A. Yes, I do recall that.

Q. Do you recall how much for an 8-hour day you paid into that would be? A. Well, let's see. Now you got your chart there. I mean I want to be sure of the amount. When we start, it was $2.00, and then there was—At what time did you say that this was reduced to 50 cents?

Q. Well, according to the Government's exhibit, based upon Mr. Steska's testimony, it was reduced on January 1st, or thereabouts, of 1966. A. And this was in 1966?

Q. Yes. A. Well, then I would say it would have been 50 cents, sir.

Q. Fifty cents for each 8-hour day? [1,093] A. If that time—What month in January, or what month in January would you say that——

The Court: You mean what month in 1966?

The Witness: Yes, sir.

The Court: OK.

Q. (By Mr. Riddle) That it was reduced to 50 cents? A. No. That was—Yes, reduced to 50 cents.

Q. Well, my question to you, sir, really, is if you remember paying for several weeeks into the Fund, but it was called the Callanan Gift Fund at that time? A. Yes, I do remember that there was a gift fund.

Q. Do you know how much went into this gift fund? A. No.

Mr. Daly: Your Honor, I'd like to renew my objection to this.

The Court: He answered he didn't know.

Q. (By Mr. Riddle) Do you know what uses were made of the money that went into that Fund?

Mr. Daly: Your Honor, may my objection show continuing to all of this questioning?

The Court: No. You better object to each——

Mr. Daly: I will object to the question; out of the scope of the direct; irrelevant; not tending to prove any of the issues in this cause.

[1,094] The Court: I will overrule it.

Q. (By Mr. Riddle) Do you know what uses were made of the money that went into the Callanan Gift Fund? A. No. I would say that offhand Lawrence Callanan was, as far as I know at any time, the Director.

Q. Well, my question, sir, do you know what the money was used for that went into the Fund? You can answer that yes or no. If you know, you can. A. No. I would say no, sir.

Q. You don't know? A. No, sir.

Q. And you never asked?

Mr. Daly: Your Honor, may I show the same objection to this question?

The Court: It will be overruled.

Q. (By Mr. Riddle) You never asked anybody what happened to it? A. No, sir, I didn't ask.

Q. Sir, this fellow Robert Magee that came on your job a couple weeks ago—— A. Yes, sir.

Q. I guess he voluntarily paid the first week around that you made a collection? A. Yes, sir. Now, he did. In fact, this man just [1,095] handed me and he also told me that he had a check for me now for this Fund.

Q. This man is from Chicago, Illinois? A. Yes, sir, 597, from Chicago.

Q. He pay you $2.00 each day for the eight hours that he worked? A. Yes, sir, that's true.

Q. And you only paid 50 cents for each eight hours you worked? A. Yes, sir, that's true. Fifty cents to the Voluntary Fund. He paid two dollars in the Voluntary Fund.

Q. Yes, sir. Did you tell him how much you were voluntarily contributing? A. No, sir, I did not.

Q. How did he know to voluntarily contribute $2.00 into the Fund last Monday morning, if you know? A. I would say due to the fact that he had worked in this area through our Local for some time, and surely he had paid into the Voluntary Fund at Monsanto, because I would assume——

Q. How do you know that? A. Well, I would just say he——

Q. Is it a fact that if he hadn't paid into the Fund at Monsanto, he wouldn't have been transferred over to your job? [1,096] Is that the reason you know it? A. No, sir. No, sir, I would not ever agree with that.

Q. Just tell the jury how you knew that he paid into the Fund over at Monsanto? A. Because, sir, when he came he had gotten transferred from that particular job, and he owed me a week of Voluntary Fund, or to the——

Q. Owed you a week of Voluntary Fund? A. Owed it, yes, sir, from the previous week. In other words, here's what would happen. I collect every two weeks for this Voluntary Fund.

Q. Why do you collect every two weeks? A. To try to make the bookkeeping for the Fund—I mean you try to keep it simplified as much as possible.

Q. Yes, sir. Well, go ahead. You were saying how you knew that he paid on the Monsanto job. A. Well, surely the man that comes with $20.00, which would have been for two weeks, he knew at the Monsanto job he was paying the particular Voluntary Fund, or he would have never came to me and handed me $20.00 just for no reason at all.

Q. You say that he owed you for two weeks over at Monsanto? A. No, sir.

Q. What did you say about him owing you for? [1,097] A. Well, now you understand the week that he came, this Monday, every other Monday that I——

Q. Go around and make your collections? A. Get the Voluntary contributions, and he gave me $20.00, which would be, actually he was only with my particular job——

Q. He would have only owed you $10.00 for that? A. Yes, sir. That is true.

Q. So he was in arrears $10.00 from the other job? A. Yes, sir.

Q. Did you know he was in arrears from the other job before you collected the twenty bucks from him? A. No, sir.

Q. Now, when he paid you his arrears, or what he owed you from the other job, you accurately entered that on the report that you made out for that collection period, didn't you? A. I enter all contributions the same way, sir.

Q. Now, what about Magee? You put Robert Magee. Then over to the side of his name you put the amount that you collected, $20.00. A. No, sir. I put down on the particular sheet, on his Voluntary sheet, two lines for my own people that are 562 men, when I speak of that, and then I put Robert H. Magee, and put [1,098] down the hours, and $20.00, but I also made a note that ten of these would be, a week of this time, so to speak, was worked at, or for this Voluntary Fund, was from the Monsanto job.

Q. Now, you were real careful to put down there that this man, being the good pipefitter that he was, you were very anxious to put down on the sheet that he had not only paid you for the current week, but he had caught up for the past week. You wanted that made clear from your report? A. Well, how could I do it any different, sir, when the man——

Q. Yes, sir. A. ——gave me, without me saying anything, $20.00? I mean actually the assessment, or the voluntary contribution for that particular item would have been ten.

Q. Yes, sir. A. And he gave me twenty.

Q. Yes, sir. A. And in this case, it was a check, sir.

Q. Yes, sir. Sir let me ask you this: When you go back to the witness room, will you tell your friends to be careful about using the word assessment?

Mr. London: I will object to that.

The Court: Be sustained. Don't——

Mr. London: Ask it be stricken, and the jury to [1,099] disregard it.

The Court: All right. Any redirect, Mr. Daly?

Mr. Daly: None, Your Honor.

The Court: We will have our morning recess. You will be excused.

(Witness excused.)

The Court: Members of the Jury, bear in mind the admonition I have given you heretofore.

(Following a brief recess, the further following proceedings were had before the jury:)

CHARLES CARPENTER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, please, sir. A. Charles Carpenter.

Q. Mr. Carpenter, where do you live, sir? A. 37 Auburndale, in the County, St. Louis County.

Q. Are you a married man, sir? A. Yes, sir.

Q. Do you have a family? A. Yes, sir.

Q. What is your profession or occupation, Mr. Carpenter? [1,100] A. I'm a pipefitter and a foreman.

Q. And are you a member of any union, sir? A. Yes, sir; 562.

Q. And that's the Local 562; is that correct, sir? A. Yes, sir.

Q. How long have you been a member? A. It will be forty-four years the 20th of January.

Q. All those years with Local 562? A. Yes, sir.

Q. Are you on a job now, sir? A. Yes, sir.

Q. Where are you working now, sir? A. At Proctor & Gamble Soap Company.

Q. Are you familiar, sir, with an organization called the Pipefitters Voluntary Fund, or with a longer name, but—— A. Well, some years; quite a bit. I know all—not all about it, but I know most about it.

Q. All right, sir. You say you are a foreman at the job, sir? A. Yes, sir.

Q. Do you contribute to the Voluntary Fund? A. No, sir.

Q. Have you ever contributed to the Voluntary Fund? A. I may have the first or second week.

[1,101] Q. When would that have been, sir? A. Oh, a long time ago. I couldn't tell you exactly.

Q. Did you ever sign a Voluntary Fund card? A. No, sir.

Q. How many jobs have you lost, or how many hours have you lost from work as a result of not contributing to the Fund?

Mr. Riddle: I object to the form of that question.

Mr. London: I will rephrase the question, Your Honor.

The Court: All right.

Q. (By Mr. London) Have you lost any job, sir, or been discriminated against because you do not contribute to the Fund?

Mr. Riddle: I will object to that as calling for a conclusion.

The Court: Conclusion. Be sustained.

Q. (By Mr. London) Have you been working steadily, Mr. Carpenter? A. Yes, sir.

Q. How long have you been working steadily, sir? A. I'd say for forty years.

Q. Forty years? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Q. And during this time, you indicated that you have [1,102] given to the Fund, have you, once or twice when it first started? A. That is about all, and I'm not real positive about that.

Q. All right, sir. As a foreman, do you receive any additional pay over and above regulation union scale? A. Well, I get foreman's pay, which is more than a journeyman's pay. Is that what you mean?

Q. Yes, sir. A journeyman's pay is how much, sir? A. Five sixty, or somewhere in that neighborhood.

Q. And as a foreman, sir, do you receive 50 cents an hour in addition to that? A. Yes, sir.

Q. And the local members of 562 who contribute to the Fund normally contribute 50 cents a day; is that correct, sir? A. I believe it is; yes, sir.

Q. And you receive 50 cents an hour above scale? A. Yes, sir.

Q. But you don't contribute 50 cents a day? A. No, sir.

Q. Anybody ever come to you, or put any pressure on you to give to this Fund?

Mr. Riddle: I will object to that.

The Court: Be sustained as to the form of the [1,103] question.

Q. (By Mr. London) During the time, sir, that you have not contributed to the Fund, did Mr. Callanan ever approach you and ask you to give to the Fund? A. No, sir.

Q. During the time, sir, that you have not contributed to the Fund, has Mr. Lawler approached you and asked you to give to the Fund? A. No, sir.

Q. During that same time, sir, has Mr. Seaton ever approached you and asked you to give to the Fund? A. No, sir.

Q. Anybody on their behalf, or on behalf of the Union approached you and asked you to give to the Fund? A. No, sir.

Q. Do some of the men where you work contribute to the fund? A. Yes. I'd say more than half. I wouldn't know the percentage, but I know some of them do.

Q. You are the foreman at that job; is that correct, sir? A. Yes, sir.

Q. Do you collect for the Fund down there? A. No, sir.

Q. Any of the men ever come to you and ask you to take [1,104] their contributions down to the Fund office at the union hall? A. Yes, sir.

Q. Do you take them down to the office? A. No, sir.

Q. Do you have any reason that you do not take them down to the office? A. I think most of them are younger than I am, and they can take it down easier than I can.

Q. You tell them to take the money themselves? A. Yes, sir.

Q. Do you have any reason why you don't contribute to the Fund? A. Yes, sir.

Q. Would you tell the Court and jury what those reasons are? A. Well, I don't believe, like Senator Long, I wasn't in favor of him, and a few things like that, but the main thing, I cannot afford it. I have too many debts.

Q. In other words, you disagree with some of the politicians that the Fund supported? A. Yes, sir.

Q. And you feel that you can use your money better elsewhere? A. Yes, sir.

[1,105] Q. Do you know what an assessment is, Mr. Carpenter? A. Yes, sir.

Q. An assessment is, we understand it is something you must pay in order to belong to the Union or to work; is that correct, sir? A. Well,——

The Court: You asked him. Don't you think you ought to let him answer?

Mr. London: I am sorry, sir. Did I misphrase the question?

The Court: You didn't misphrase it. You merely stated what your opinion was.

Q. (By Mr. London) Sir, what is an assessment? A. I think it is money that we are obligated to pay to keep our Local intact and pay the bills, and so forth and so on; keep the Union officers' salary going, and pay the rent, and things like that.

Q. Does the Voluntary Fund have assessments? A. No, sir.

Mr. London: That's all.

The Court: All right. You may inquire. Just a minute. Does anybody want to ask him any questions?

Mr. Daly: No, Your Honor.

Mr. Randall: No, Your Honor.

[1,106] The Court: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you said that you knew something about this Fund, but you didn't know all about it? A. Yes, sir.

Q. Tell us what it is that you do know about it. A. Well, mostly from what I read in the paper, and hearsay on the job, which is some political donations, and they bought wheelchairs, I know, for one person that couldn't walk any more, and they bought a lung for people that

needed it, one of these decompression chambers, and things like that. That is just about all I do know of it.

Q. Have you seen this decompression chamber? A. Yes, sir.

Q. Did you see what was written on the side of it? A. I did, but I don't remember. I remember the words 562 was on it. I saw it at the Sport Show.

Q. Yes, sir. You say this was bought out of the Fund? A. I believe it was. That's why I say, I don't know too much about it.

Q. The one that you saw out at the Sport Show, did it have anything about being contributed by the Voluntary Fund? A. Well, I couldn't tell you for sure.

[1,107] Q. It had Local 562 on it? A. I am pretty sure that is why I recognized it; yes, sir. And that was my conclusion it came out of that Fund.

Q. Why do you think it came out of that Fund, instead of the regular Union funds, if it was labeled 562? A. Well, I don't know. You just have to make up your mind to something, and that was my conclusion.

Q. Sir, you say you work out at Proctor & Gamble? A. Soap Company.

Q. Soap Company? A. Yes, sir.

Q. How long have you been out at the Proctor & Gamble Soap Company? A. This is my third week.

Q. Does the type of work you do have to do with construction, your job? A. Yes, sir.

Q. What kind of a job were you on before Proctor & Gamble? A. I was at the Old Fairgrounds Hotel. They are remodeling that for a nursing home.

Q. Sir, these people that are on your job now at Proctor & Gamble, how many are under your supervision? A. There's only three there besides myself. That is a [1,108] total of four.

Q. Who collects the money from them each week? A. I wouldn't have any idea. I imagine they take it in themselves, except the assessment is taken out of the checks.

Q. Do you know whether or not these people pay into this Fund? A. No, sir, I do not, except I hear them talking. I know one of them says he does, but I don't know whether he does or not. I know two of them say they do.

Q. Two of them say they do? A. Yes, sir.

Q. Sir, I recall your testimony to be that at one time earlier you had paid into the Fund? A. I'm not positive, but I do believe I paid one or two weeks, and I wouldn't say for sure. It might have been three weeks. It might not have been any time, but I do believe I paid one or two weeks.

Q. About when would this have been? A. Well, I'd say three or four years ago, to the best of my knowledge.

Q. What job were you working on then? A. On the Regency Nursing Home, on West Pine.

Q. Regency? A. Yes, sir.

[1,109] Q. Nursing Home on West Pine? A. 4560 West Pine.

Q. Were you a foreman on that job? A. Yes, sir.

Q. Who did you pay your money to? A. I didn't pay. You mean the Voluntary money? I didn't pay any.

Q. Well, I thought you said you recalled that you had paid? A. Well, I don't know where I was when I paid those one or two weeks, if I had paid it. I can't remember. It might have been on that job. It might have been previous, before that.

Q. Well, on the times that you did pay, can you tell the jury and the Court how you paid it? A. I believe I sent them a check, to the best of my knowledge. That would be my most honest answer that I could give you.

Q. Mailed it in to the hall? A. Yes, sir.

Q. Do you recall the amount of that check, or those checks? A. No, I don't.

Q. Sir, about that time, did you sign one of these [1,110] Voluntary Cards? A. No, sir.

Q. Did you ever sign one? A. Not that I know of. In fact, I'm almost positive I never.

Q. Sir, at the time that you made these two or three payments, do you recall how you made your check out? A. I imagine Voluntary Fund, but I wouldn't know.

Q. Sir, what caused you to make those two or three payments? A. Well, I just figured that it was a good cause, and I realized after making, if I made a lot of them, that I would—my balance of my budget wouldn't come out right, so I just stopped.

Q. Did you have a conversation with anybody about paying, at the time you did send them? A. No, sir.

Q. How did you find out that there was a Fund? A. Well, I couldn't tell you. I just don't know. I guess from talking to the men on the job is all I can remember, but I don't remember. That's probably been five or six years ago, to the best of my knowledge.

Q. Well, is this your recollection now as to when it was, five or six years ago? I recall you testified a few [1,111] minutes ago that it was three or four years ago. A. Well, it's been quite a while ago. It was, if I knew when I finished the job at Regency, I could kind of gather back, but I'm not positive of that at all. I'd say it's been three to five, maybe six years ago; somewhere in that category. If it was some important event, I'd probably remember it.

Q. Sir, have you ever talked—do you know Mr. Callanan? A. Yes, sir.

Q. Do you know Mr. Lawler? A. Yes, sir.

Q. Do you know Mr. Seaton? A. Yes, sir.

Q. How long have you known Mr. Callanan? A. Well, ever since he's come into our local.

Q. Are you related to him? A. No, sir.

Q. To Mr. Lawler? A. No, sir.

Q. To Mr. Seaton? A. No, sir.

Q. You have been a member of this Local for forty-four years? Or a member of—— A. I joined the 20th of January, in 1925. I think [1,112] that is forty-four years; will be forty-four years this January, I believe.

Q. Sir, what size jobs have you usually been in charge of? A. Well, the Regency Nursing home, I think was sixteen or seventeen stories, and before that I was on the Hanley Towers, which was seventeen stories.

Q. How many men in your crew on those jobs? A. Well, it would vary, I would say at the most about fifteen or sixteen men; maybe twenty.

Q. Did you ever collect this money from any of your people at any time? A. No, sir.

Q. Was there a steward on the job with you at any time that did do this collecting? A. There was for about a month on the Regency, and what he did, I don't know.

Q. Sir, do you know, of your own knowledge, of anybody else of all the membership, that doesn't pay into the Fund? A. Do I know of some? Yes, sir.

Q. Can you give me their names? A. Yes, sir. Joe Unger.

Q. U-n-g-e-r? A. Yes, sir.

[1,113] Q. Who else? A. Art Albert.

Q. Albers? A. Alberts.

Q. What is his first name? A. Well, they call him Art. I guess it is Arthur.

Q. All right. A. And I know several—there's George Taylor. Now, those are men in my shop, in our shop,

rather, and I wouldn't be sure of anybody else, but I have talked to a lot of them who have told me they didn't pay it. Lots of them.

Q. When you talk about your shop, what do you mean by that? A. Well, I have been with this shop, Guaranteed Engineering Company, for twelve or thirteen years, somewhere in that neighborhood.

Q. Are they your immediate employers? A. Yes, sir.

Q. And what is their name? A. Guaranteed Engineering Company. Heating and engineering company.

Q. Now, what type of work do they do, this Guaranteed and Engineering Company? A. They do mostly all piping work, and they also go [1,114] under another name of Dan Siegel & Associates, which is strictly an engineering firm, which I have nothing to do with. Dan Siegel Associates.

Q. You have been with them how long? A. I would say twelve, maybe thirteen, and possibly fourteen years.

Q. So you are on their payroll? A. Yes, sir.

Q. Does your job differ from other people who are members of Pipefitters 562, in that they are assigned to various construction jobs and to various companies from time to time from the union hall? How does your job differ? A. None that I know of. Nobody works direct out of the union hall, that I know of. They all work for a contractor, to the best of my knowledge.

Q. Did you work for this one company for twelve years? A. Yes, sir.

Q. Who did you work for before then? A. Well, I worked mostly out through the state on powerhouse work, usually for out-of-town contractors.

Q. Do you attend the Union meetings? A. Not too much; no.

Q. How many have you attended in the last five years? A. I'd say two or three.

[1,115] Q. Was there a particular reason, or particular business matter that came up on those occasions that caused you to go? A. There possibly was some reason of interest; yes, sir.

Q. Do you recall what that was? A. One of them, there was a possibility of a strike. I went several times during that period. And other times I just went because I probably didn't like it.

Q. You gave me the name of Alberts and Taylor and Unger. Can you give me any others? A. Not to be sure of; no, sir. I have run across quite a few though, but I couldn't tell you who they are now.

Q. Do you know Robert Sanders? A. No, sir. I know a Ralph Sanders.

Q. Do you know Al Rosen? A. I did a long time ago. I think he's a pretty elderly man, but I do believe I have known him.

Q. Do you know Gerald Roberts? A. No, sir.

Q. William Reeves? A. I don't believe so.

Q. Ernest Pleskit? A. Not that—No.

Q. Edward Nagel? [1,116] A. No, sir.

Q. Patrick Murphy? A. I am not sure. I would say no, but I'm not positive.

Q. John C. Laird? A. No, sir.

Q. Henry Klingle? A. No, sir.

Q. Lester Weidlich? A. No, sir.

Q. George Taylor. Now, you gave me that. A. Yes, sir.

Q. Ronald Seabolt? A. No, sir.

Q. Elmer Geiger? A. I don't believe—I might know him. I'm not sure.

Q. Ray Goldkamp? A. No, sir.

Q. Charles Good? A. I believe I know him; yes, sir.

Q. Vic Hoemeke? A. No, sir.

Q. Frank Kasal? A. No, sir.

[1,117] Q. Jerry Kavanaugh? A. I don't know whether I know that man or not.

Q. Do you remember a Robert Albers? A. Yes, sir.

Q. Do you know a Thomas Albers? A. Oh, wait a minute. I know an Art Alberts.

Q. Well, this is a different one. A. No, I don't know him.

Q. Or Thomas Albers? A. No, sir. You know, when I say no, they may have worked for me even some time, but I don't remember the names, because I have a lot of people that come up and say, "Don't you remember me? I worked with you on such and such a job?" and I had forgotten them, but some of them I do remember. I remember their faces and don't remember their names sometimes, too.

Q. Sir, how old are you? A. I'll be sixty-five the 9th of this next June.

Q. Do you have any financial interest in the engineering company out there, the one that you work for? A. No, sir.

Mr. Riddle: I believe we have nothing further to ask this witness at this time.

Mr. Randall: I'd like to ask him one question at this [1,118] time.

Redirect Examination

By Mr. Randall:

Q. Do Union rules prohibit you from having a financial interest in the company, don't they, sir? A. Yes, sir.

Mr. London: One question.

Redirect Examination.

By Mr. London:

Q. Mr. Carpenter, can you tell us, roughly, how much income you earned as a pipefitter last year? A. Yes, sir.

I looked it up last night, and it was right at the thirteen thousand bracket.

Mr. London: Thank you, sir.

Recross-Examination

By Mr. Riddle:

Q. Sir, do you have a retirement date? A. I am going to retire the end of next year, if it is possible.

Mr. Riddle: All right. We have nothing further.

Mr. Randall: Nothing further.

The Court: All right. You may be excused.

(Witness excused.)

[1,119] **VICTOR HOEMEKE,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Hoemeke, would you state your full name, please, sir? A. Victor A. Hoemeke. It is pronounced either—it has two pronunciations. Some people pronounce it Hoemeke, and some Hoemeke, so you will have to forgive me if I change once in a while on that.

Q. All right. And where do you live, Mr. Hoemeke? A. 4307 Grasso Lane, Affton.

Q. And what is your employment? A. What is that?

Q. What is your job? Your occupation? A. My job is usually termed a riding boss for C. J. Moritz Company. It is, at the present time the title is area foreman, because they have more than eight men and several foremen.

Q. Now, sir, how long have you held your present job? A. Just as this area foreman?

Q. Yes. A. Since 1960.

Q. And how long have you been with this company on the [1,120] last stretch, or the last time that you have been with them? A. Since 1960.

Q. And prior to that time, where did you work? Immediately prior? A. Immediately prior, I worked six months at Anheuser-Busch brewery.

Q. Prior to that time, where did you work? A. I worked for C. J. Moritz Heating Company from 1940 to 1959, when I went to the brewery.

Q. Did you choose to shift to the brewery at that time? A. I asked at the union hall if there was an opportunity to go to Busch's brewery, I would appreciate it, because I was having some heart trouble, and the job down there was easier than the aggravation on the outside.

Q. And did they send you to the brewery? A. Yes, they did, the first opportunity they had.

Q. And did you ask to come back with your company? A. I did not ask to come back. Mr. Moritz, Sr., who is the president of the company, called me and asked me if I would come back with them, and I said, "Well, let me check with the union hall first, and let's make some arrangements that it is worth my while," and I asked them at the union hall, after I discussed the thing with Mr. Moritz, I asked them at the union hall if it would be permissible, and they said, [1,121] "Yes. We don't stop anybody if they can get a position of that kind. Go ahead."

Q. And how much did you earn last year, sir? A. In the vicinity of $14,000.

Q. Now, Mr. Hoemeke, have you ever contributed to the Voluntary Political Fund? A. Not as a political contribution. If memory serves me right, I gave a hundred dollars to the Fund in 1963, but I didn't—at the time it looked like a strike was imminent, and there was talk that they were going to have a strike fund for some of

the less fortunate members who possibly couldn't stand to be off for any length of time because of, maybe, the size of their family, or some other reason, so I went down and gave a hundred dollars to the Fund.

Q. Is that the only contribution you have ever made to the Fund, of one hundred dollars? A. Right; that's right.

Q. Sir, has anyone, any officer, or any business representative of the Union, ever asked you to contribute to the Fund? A. No.

Q. Has anyone ever spoken to you about your failure to contribute to the Fund? A. No.

[1,122] Q. Now, on your jobs, the men that you have worked for, worked under you, have you collected money for the Fund from those people? A. Never have. Never have.

Q. Have you had a steward on your jobs? A. No, we have never had a steward appointed, because we work mostly jobs where there's two, three men employed. The firm I work for does mostly school buildings. We have two or three men on a job, maybe sometimes six, but we have never had a steward appointed by the hall to collect any monies of any kind.

Q. I see. And do you act as the steward when there is need for a steward? A. Well, there are jurisdictional things come up, possibly between the trades. I am probably a little more versed than the rest of the fellows in our employ, so I will tell them what the ruling is on the thing, and if it is a little more than that, or if the trades will not agree, then I will usually say to the man who is a foreman on that particular job, "I think you better call the hall and find out what the ruling is, or if you need assistance, have a business agent come out and give you assistance.

Q. Do you know whether the men on your job contribute to the Fund or not? [1,123] A. I couldn't say for sure they

do. I have heard the fellows say, "I think I'll go down Saturday and pay some money in the Voluntary Fund," or, "I'll go down and see Mr. Burke about stamps in their book," or something like that, but, no, actually I have never discussed it with any of them.

Q. I see, sir. And how long have you been a member of Local 562, sir? A. Since 1940.

Q. And how old are you? A. Forty-eight.

Q. And do you have a family? A. Yes. I have one daughter.

Q. Sir, have you ever had any men under you who were non-members of Local 562? A. You mean fellows from out of town?

Q. Yes. A. Yes, I have some right now.

Q. Have you ever taken into consideration in any way the work that you give to your men, whether or not they were contributing to the Voluntary Fund? A. No, because primarily my job is trying——

Mr. Riddle: I want to object to that as not being responsive to the question.

The Court: All right. Answer the question. Do you [1,124] know what the question was?

The Witness: Would you repeat it, please?

Q. (By Mr. Randall) I said have you ever taken into consideration the fact as to whether or not the men were contributing to the Voluntary Fund in any way in handing out work to the people that are under you? A. No, sir, because primarily——

Mr. Riddle: I will object to the balance of that. His answer has been no. I ask that the rest of it would be non-responsive.

The Court: I think he can explain his answer.

Q. (By Mr. Randall) Would you explain your answer, please? A. Yes. Primarily in the position I am in, I feel that I owe this much to the company that employs me, that I have to try to see that they realize a profit on their contracts, and I use the men to my discretion, as I think best in making a profit on these contracts that the company has entered into.

Q. And has anyone from the Local ever spoken to you about this matter of how to use men? A. No.

Mr. Randall: That's all.

The Court: Anybody else?

Mr. Daly: No, Your Honor.

[1,125] The Court: All right. Mr. Riddle.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you say you have been a member of the Local since 19 and 60? A. '40.

Q. '40. And you went out to Anheuser-Busch when? About 19 and 60? A. 1959.

Q. 1959. What kind of work were you doing before you went out to the Busch brewery? A. I was working as a foreman for C. J. Mortiz Heating Company, as a pipefitter on various school jobs and other contracts they had.

Q. Now, you mentioned that there was some reason for your wanting to work out at Anheuser-Busch. Did it relate to a heart attack that you had about that time? A. I am troubled with hardening of the arteries, and that was one of the reasons I went down there.

Q. When you took this job, or got the job down at Anheuser-Busch, did they hire you, or did the union hall send you down? A. The union hall sent me down, but it is up to Busch's discretion whether they want to hire you or not.

[1,126] Q. All right. Well, how did you find out about the job there at Anheuser-Busch? A. There was no job. There wasn't no job. I knew there was pipefitters working down there. My father was a foreman down there for years and years. The way they do, when they need men, they call the union hall, and actually from the time I requested the opportunity to go down there until the time I actually got called to go down and take the physical examination, was, if memory serves me right, was in excess of a year.

Q. Sir, at the present time, just what type work are you doing down there? A. Where? I am not at Busch's.

Q. Well, where you are working now? A. At the present time, I spend about three hours a day in the office lining up tools and equipment, materials that have to go out on the jobs, and the rest of the time I spend going around the jobs and see that the men are interpreting the plans right and installing the jobs correctly, and see that they are getting the work done.

Q. All right. Sir, are you familiar with what is referred to as the Voluntary Contribution Card? Did you ever see one of them? A. Yes, I saw one of them; um hmm.

[1,127] Q. When did you see one? A. Oh, one day I went over to the union hall to talk to Mr. Burke about other matters, and I saw one laying there, and I read it.

Q. Is that the only one you have ever seen? A. Yes.

Q. How long ago was that? A. Well, I don't know; possibly a year ago.

Q. Sir, I'm not sure about the time sequence here. You began down at Busch's in 1959, and you stayed there until what date? A. Until June of 1960.

Q. All right. And then since June of 1960—— A. I have been in the employ of C. J. Moritz Company.

Q. C. J. Moritz? A. Moritz. M-o-r-i-t-z.

Q. How many pipefitters do you have under your supervision? A. At the present time, we have sixteen, I am quite sure.

Q. Sixteen? A. Right. It will vary between fourteen and twenty-six, twenty-five, something like that.

Q. Now, do these sixteen people pay into this Fund, as [1,128] far as you know? A. I couldn't say.

Q. You don't know? A. No, I don't know.

Q. At the present time, are any of these sixteen members of a local other than 562? A. Yes.

Q. How many of them? A. I believe two of them are.

Q. Do you recall their names? A. Yes. One is a gentleman by the name of John Frain.

Q. How is the last name spelled? A. F-r-a-i-n. And the other one is John Greer, G-r-e-e-r.

Q. What locals are they members of? A. Offhand I couldn't say, Mr.——

Q. Do you know if any of these people, any of these sixteen that work under you, pay into the Fund? A. I feel sure that some of them do, but I couldn't just name them. I don't know which ones do and which ones don't.

Q. Well—— A. To me, that has been a personal affair whether a man wants to give to it or not. I don't say, "Do you give to it?" Or, "Don't you give to it?" I don't care. I don't give to it, [1,129] and I have my reasons why I don't give to it.

Q. Why don't you give to it? A. Because I don't think that money spent with politics is going to mean that much in outlawing or getting rid of bad labor laws, and it is my personal opinion, so that is why I don't give to it.

Q. Have you expressed your opinion before along that line, and just as you did now? A. To whom? No one ever asked me this question before.

Q. My question is have you ever expressed your opinion just the way that you did in front of this jury and Court? A. No.

Q. You never have? A. No.

Q. You say your father before you was a pipefitter? A. Right.

Q. For how long? A. Ever since the local union was chartered here in St. Louis by United Association, until the day of his passing away.

Q. Do you know how long that—when was it chartered? A. I couldn't say for sure, sir. I think it was 1909 or 1908. I'm not positive.

Q. Sir, have you attended any union meetings within the [1,130] last few years? A. No, not since the pipefitters were on strike.

Q. That's the last one you have attended? A. Right.

Q. And that was in 1963? A. Right.

Q. Do you have a regular journeyman pipefitter's card? A. Right.

Q. You say you made a one hundred dollar contribution? A. Yes.

Q. What was your purpose for making that? A. Well, at the time it looked like a strike was going to be imminent. There was hearsay talk, there was talk amongst the men that they were going to use part of the Voluntary Fund to help some of the fellows through the strike that had large families, or had large doctor bills, or something like that, so I thought, well, I've always been fortunate, so I will go down and make a contribution. At least it will help, might help some brother member through a hard time.

Q. When you went down to make a contribution, who did you talk to about it? A. I talked to the secretary, Mr. Burke. I asked him who received it.

[1,131] Q. Beans Burke? A. Right. I asked him who I was to pay it to, and, truthfully, I don't remember who I paid it to, but it was, I believe it was—I couldn't say now for sure if it was upstairs—I believe it was upstairs.

Q. Was it with your check? A. Yes.

Q. And this was for, from your point of view, for strike benefits for your fellow members? A. That's right.

Q. You paid into the Fund, and not into a union Welfare Fund? A. No, no. This was into the Voluntary Fund.

Q. When you were down there, did you talk to Mr. Burke about why you were paying into it at that time? A. No, no. I didn't feel like if I want to give something, I don't think I have to discuss it with anyone. I don't discuss any other contributions with anyone, and if I have my reasons for it——

Q. You just gave him the hundred dollars? A. Right.

Q. And didn't tell him why you decided to give it? A. No.

Q. He didn't ask you? [1,132] A. No.

Q. Did you get a receipt? A. No.

Q. Did you keep your cancelled check? A. I suppose it is at home.

Mr. Riddle: The Government has nothing further to ask this witness.

The Court: Any other questions?

Mr. Daly: No, Your Honor.

Mr. Randall: No further questions.

The Court: Step down.

(Witness excused.)

LESTER WEIDLICH,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, sir? A. Lester Weidlich.

Q. Would you keep your voice up? Where do you reside, Mr. Weidlich? A. At Rock Hill, Missouri; 1017 O'Day.

Q. And are you a married man? A. Yes, sir.

[1,133] Q. What is your occupation? A. I'm a service fitter.

Q. And by whom are you employed? A. My employer is Hussmann Distributing Company.

Q. How long have you been employed by them? A. Thirteen months.

Q. For whom did you work prior to this employment? A. National Food Stores.

Q. And how long were you with National Food Stores? A. Fifteen years.

Q. Fifteen years. Now, are you a member of Local 562? A. Yes, sir.

Q. How long have you been a member of Local 562? A. Since '48, I think.

Q. Are you a journeyman member? A. Yes, sir.

Q. All right. Now, are you familiar with, or have you heard what is known as the Voluntary Fund, or the Political Fund? A. I've heard about it.

Q. Now, let me ask you if you have ever contributed to this Voluntary Fund? A. No, sir.

Q. And have you worked steadily for the sixteen years that you have been a member of 562? [1,134] A. Every day.

Q. Have you worked overtime? A. Some.

Q. And——

The Court: If he worked since '48, it's twenty years ago.

Mr. Daly: I think he said he's a member for sixteen years.

The Court: He said he was a member since '48 here.

Mr. Daly: I am sorry. Now, you say that you have never given to the Fund at all; is this correct?

A. I have never given to it; no.

Q. Did you ever sign a Voluntary Card? A. No, sir.

Q. Did anyone ever ask you to give to the Fund? A. No, sir.

Q. Did anyone ever come out and ask you why you were not contributing to the Fund? A. No, sir.

Q. Has the fact that you have not given changed your situation as far as the Local is concerned? A. No, sir.

Q. Why do you not give to the Fund, Mr. Weidlich? A. I was never asked, really, to give, and I didn't [1,135] care to contribute, I guess.

Q. You feel like you just don't care to contribute; is that right? You don't care to contribute? A. Yes.

Q. What do you earn per year? A. Eleven five.

Q. $11,500? A. (Indicating yes.)

Mr. Daly: I have no further questions.

Cross-Examination.

By Mr. Riddle:

Q. Mr. Weidlich, you say you are a service fitter? A. Yes, sir.

Q. What does that name mean? Is that a particular classification of pipefitters? A. We service rather than install.

Q. You service rather than install? A. (Indicating yes.)

Q. Now, are you different from the construction pipefitters? A. Not necessarily. There's no category that places us different. We just call ourselves that, I think. A service man will call himself a service fitter.

Q. You don't follow construction projects? [1,136] A. That's right.

Q. You do not follow them? You don't go down to Pilot Knob, or up to Louisiana, Missouri, or—— A. No. I want to clarify that. I would if there wasn't service work to do. Then I could take those jobs.

Q. Well, do you work alone, or—Are you the only service fitter at the place where you work? A. No. There's about ten.

Q. About ten others? A. (Indicating yes.)

Q. During the time that you were at National Food Stores, about how many of your service fitters were there? A. There was three.

Q. Three. And you were there for about fifteen years? A. I think so.

Q. Sir, the others who are out there working with you, are they under your supervision? A. No.

Q. I see. I didn't make a note of it. You said there were how many other pipefitters working with you at Hussmann? A. There's about ten in the service department, and then there's maybe ten or twelve in the installation department.

Q. Well, this is not a construction job at Hussmann? A. That's right, it is not.

[1,137] Q. It is just a maintenance job? A. That's right.

Q. Is there a steward on the job or—— A. Yes, we have a steward.

Q. Who is he? A. His name is—You want his name?

Q. Yes. A. Eddy Joyce.

Q. Eddy Joyce. Sir, have you heard—Well, strike that. Do you attend the union meetings? A. Most of them.

Q. You do? A. (Indicating yes.)

Q. Have you ever attended a meeting when the Political Fund was discussed? A. Yes, sir.

Q. Do you remember where that meeting was held? A. I'm not sure.

Q. Sir, of your own knowledge, do the other ten people in your service department contribute into the Fund. A. I really wouldn't know if they do.

Q. Nobody has ever asked you? A. No. Nobody has ever asked me.

Q. Sir, are you familiar with the little card that is [1,138] called a Voluntary Political Fund Card? Did you ever see one of them? A. First one I ever saw was last, just a week ago. I hadn't never offered one to sign.

Q. Where did you see one about a week ago? A. I saw one at the lawyer's office.

Q. All right. And you never signed one of them? A. No, sir.

Q. And was never asked to sign one? A. That's right.

Q. Well, you knew of the existence of the Political Fund, I assume? A. Yes, I did.

Q. Is there any particular reason why you never contributed into it, or paid into it? A. It was voluntary, and I chose not to contribute.

Q. Sir, do you have a foreman out where you work? A. Yes, sir.

Q. Who is your foreman? A. His name is Frank Aldridge.

Q. Frank Aldridge? A. (Indicating yes.)

Q. Is he a pipefitter? A. Well, he's our riding foreman and riding boss.

[1,139] Mr. Riddle: All right, sir. I have nothing further of this witness.

The Court: All right.

Redirect Examination.

By Mr. Randall:

Q. Sir, does a service journeyman pipefitter receive the same pay as a building journeyman pipefitter? A. Oh, yes.

Mr. Riddle: Nothing further.

The Court: You may be excused.

(Witness excused.)

ELMER F. GEIGER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, please? A. Elmer F. Geiger.

Q. Where do you live, Mr. Geiger? A. 9762 Big Bend, Crestwood.

Q. Do you own your home out there? A. Yes, sir.

Q. Married man? A. Yes, sir.

[1,140] Q. Family? A. Just the wife.

Q. Mr. Geiger, what is your occupation? A. Pipefitter, 562.

Q. You are a member of Local 562? A. Right.

Q. How long have you been a member, sir? A. Thirty-four years.

Q. Where are you working now? A. For Condaire Company.

Q. Where is that? A. At—I think it is 3445 Gravois.

Q. How long have you been on that job? A. I have been with that company five years.

Q. On the same location where you are now, on the same job, or do you move around? A. No, different jobs.

Q. Mr. Geiger, are you familiar with the Pipefitters Voluntary Fund? A. Yes, sir.

Q. Are you familiar with a card of the Fund, contribution card, or Contribution Agreement? A. Yes, sir.

Q. Did you ever sign one of those? [1,141] A. Quite a while ago, I think. I don't remember whether I have or not.

Q. Did you ever contribute to the Fund? A. Yes, sir.

Q. When did you contribute to the Fund? A. Up until about three years ago.

Q. Are you contributing to the Fund now? A. No, sir.

Q. You stopped about three years ago? A. That's right.

Q. Did you continue to work after you stopped contributing to the Voluntary Fund? A. Yes, sir.

Q. Did you lose any jobs because you stopped contributing to the Fund? A. No, sir.

Q. Were you denied any overtime because you stopped contributing to the Fund? A. No, sir.

Q. Anybody from the Union come out to you to inquire as to why you stopped contributing? A. No, sir.

Q. Mr. Callanan come out and ask you why you weren't contributing? [1,142] A. No, sir.

Q. How about Mr. Lawler? Did he come out and ask why you weren't contributing? A. No, sir.

Q. Mr. Seaton? A. No, sir.

Q. Anybody on their behalf, or on behalf of the Union? A. No one at all, sir.

Q. About how long did you pay into the Fund? A. From the start until about three years ago.

Q. What is your wage rate, Mr. Geiger? A. I merely looked at the——

Q. Would it be $5.60 an hour? A. Right.

Q. Do you know offhand, sir, about how much you made last year? A. Around eleven thousand, I believe.

Q. Pardon me? A. Around eleven, I believe.

Q. Do you know what an assessment is, Mr. Geiger? A. Yes, sir.

Q. The Voluntary Political Fund that we are talking about, is that an assessment? A. No, sir.

[1,143] Mr. London: That's all.

Cross-Examination.

By Mr. Riddle:

Q. Sir, how old are you? A. Sixty-two.

Q. You have been a member of 562 for thirty-four years? A. Yes, sir.

Q. Was your father a member? A. No, sir.

Q. What type work, specifically, do you do as a pipefitter? A. Well, what I have done practically all—I have done service work on air conditioning, refrigeration, and have been a foreman on a construction job.

Q. You have been a foreman on a construction job? A. The last, practically ten years.

Q. You are not in construction work now? A. Yes, sir.

Q. But you are not a foreman now? A. Yes.

Q. You are a foreman now? A. Yes, sir.

Q. Foreman on construction jobs for the past ten years? A. Longer than that, actually.

[1,144] Q. All right. What job is it that you are working on at the present time? A. Windsor School, in Imperial, Missouri.

Q. A school building? A. That's right.

Q. Imperial? A. That's right.

Q. How many people are on your crew? A. At the moment, two.

Q. Have you been assigned to larger jobs, or smaller jobs? A. Larger jobs.

Q. Larger jobs? A. That's right, sir.

Q. You have frequently more than two people on your crew? A. Yes.

Q. Sir, the construction work that you do, does this take you all around the area outstate? A. I haven't gone outstate for several years.

Q. How long ago? A. About '55. Well, I take that back. I was over in Illinois about two months ago.

Q. All right. Sir, you say about three years ago you [1,145] stopped paying into the Fund? A. That's right.

Q. And prior to that time, you had paid into it? A. Intermittently.

Q. For how long? A. Well, I paid by check. I paid, let it run for a while, paid by check generally.

Q. Now, had you signed a card? A. I don't have any recollection of it. I may have. I don't remember.

Q. Did you always pay by check when you paid? A. Not necessarily.

Q. Sometimes by cash? A. Yes.

Q. So on the jobs that you have been a foreman on for the last few years, have you made any collections? A. No, sir.

Q. Have collections been made on your jobs? A. Perhaps about two.

Q. Who did the collecting? A. By the steward on the job.

Q. You mean two jobs there have been collections? A. That's all I can remember offhand.

Q. What jobs were they? [1,146] A. County Library at Clayton and Lindbergh, and the last one I remember was United Parcel Service on Scott and Jefferson.

Q. All right. The two people that are working for you now, do they pay into the Fund? A. They pay individually. I couldn't tell you that.

Q. You don't collect from them? A. No, sir.

Q. Did you ever collect? A. No, sir.

Q. Is there a reason why you have never collected? A. I have never been given any authority to collect, and I never asked for the privilege.

Q. I see. Now, did some event occur about three years ago that caused you to cease paying? A. No, not necessarily. I just am an independent voter, and I believe that you have the right to give or not to give as your proposition.

Q. And you decided to stop? A. That's right.

Q. Did you talk to anybody about it at the time? A. No, sir.

Q. No one? A. No one.

[1,147] Q. Do you go to your Union meetings? A. Now and then.

Q. When is the last time you were at one? A. Oh, about four months ago.

Q. Before that, how long was it before you were at a meeting? A. Oh, generally, I don't know—possibly about two or three months' interval.

Q. Have you ever heard the Political Fund discussed down there? A. I have; yes.

Mr. Riddle: I believe we have nothing further to ask this witness.

The Court: Any redirect?

Mr. London: One brief question, Your Honor.

Redirect Examination.

By Mr. London:

Q. Mr. Geiger, on any of the jobs that you have been foreman on, do you require more of the men working under you and who is not contributing to the Voluntary Fund? A. No, sir.

Q. Does the fact that a man does or does not contribute to the Voluntary Fund make any difference to you in the assignment of work? [1,148] A. Not a bit.

Q. In the granting of overtime? A. No, sir.

Mr. London: Thank you. That is all.

Recross Examination.

By Mr. Riddle:

Q. Sir, do you hire your own men, or are they sent to you from the hall? A. They are sent to me from the hall.

Q. You have no discretion on who comes out, or who is sent from the hall? A. No, sir.

Q. That is all done by the business manager, Mr. Steska, or one of the others? A. Well, I convey my information to the owner of the company, and he calls for the men.

Q. If you need five men, or six men, you tell your company and they call the hall? A. That's correct.

Q. And the hall decides who is sent out? A. I have no idea of that. I presume so.

Q. But you don't go out and select your own people yourself? A. No, sir.

[1,149] Q. If there is a layoff, who decides who is laid off? A. A layoff is decided normally by the foreman or the employer.

Q. But if you are going to lay off two out of six, who decides which two of the six will be laid off? A. There's generally a conference between myself and the employer as to who to lay off.

Q. And a representation of the Union? A. No, sir.

Q. The Union is not in on that with your—— A. They haven't been with me.

Mr. Riddle: I see. I have nothing further.

Redirect Examination.

By Mr. London:

Q. When it comes time for a layoff, Mr. Geiger, do you take into consideration whether or not the men are contributing to the Voluntary Fund? A. None, because I don't know whether they are or not.

Q. So they are laid off in your discretion? You keep the men that you feel are best able to do the job for the company you are working for; is that right? A. For the particular work I have to do.

Q. Without any consideration to the Voluntary Fund? A. None.

[1,150] Mr. London: Thank you.

The Court: You may be excused.

(Witness excused.)

FRANK J. KASAL,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly

Q. Would you state your name, please? A. Frank J. Kasal.

Q. And where do you reside, Mr. Kasal? A. 519 St. Paul Drive, Cahokia.

Q. With whom do you reside? A. My wife and family.

Q. Are you employed at the present time? A. I am.

Q. By whom? A. Kramer-Hicks.

Q. What business or occupation? A. Pipefitter.

Q. What kind of a company is Kramer-Hicks? A. Pipefitting, heating, air conditioning.

Q. How long have you been with Kramer-Hicks? A. Since April of this year.

[1,151] Q. And for whom were you employed prior to going to work for Kramer-Hicks? A. Connors Heating.

Q. Are you a member of Local 562? A. Pardon me?

Q. Are you a member of Local 562? A. I am.

Q. And for how long have you been a member? A. Since 1957.

Q. Are you familiar with the Voluntary Fund? A. I am.

Q. And did you sign a Voluntary Agreement Card? A. I have.

Q. And have you contributed to this Fund? A. At times.

Q. Are you contributing now? A. I am.

Q. And you say "at times." Were there times that you did not contribute? A. Yes, sir.

Q. All right, sir. Now, let me ask you if, during the days that you did not contribute, did anyone ever come and talk to you about the fact that you were not contributing? A. No, sir.

[1,152] Q. Did you ever lose any job as a result of not contributing? A. I did not.

Q. Did you ever lose any overtime? A. No, sir.

Q. Have you ever been a collector for the Voluntary Fund? A. At one time I was.

Q. And, at this time, you collected for the men; is this correct? A. I did.

Q. Did you ever tell any of them that they had to pay into this Fund? A. No, I didn't.

Q. Are you working steady now? A. Yes, sir.

Q. Did you ever work as a foreman? A. Yes, sir.

Q. As a pipefitter. And what job was that? A. Well, all of the jobs while I was with Connors.

Q. That was before this present company; is this correct? A. Yes, sir. I am a foreman now.

Q. Now, you indicated earlier that you had contributed [1,153] some of the time, and some of the time you didn't? A. Yes, sir.

Q. What is the longest period of time, Mr. Kasal, that you went without contributing? A. Oh, that is hard to say; possibly, maybe a year.

Q. And did you work steadily during that time? A. I did.

Mr. Daly: I have no further questions.

Cross-Examination.

By Mr. Riddle:

Q. Sir, when was the year that you didn't pay anything in? A. Well, it wasn't all in one year, but over a period of time there was times that I paid, and sometimes that I didn't, according to my finances.

Q. You have been a member since when? 19 and—— A. 57.

Q. 57. You say at times you collected the money from the people out on the job? A. I did.

Q. When was this? A. I'm doing it now, and I done it when I was on the last job I was on for Connors.

Q. You have been on the job for Kramer-Hicks since [1,154] April '68? A. Yes, sir.

Q. How many people do you have under your supervision now? A. Six to eight.

Q. Did you collect from them each week? A. Yes, sir.

Q. Each Monday? A. Yes, sir.

Q. How many of this six or eight paid you last Monday? A. All of them.

Q. What about the previous week? A. All of them.

Q. Any of them out-of-towners? A. No, sir.

Q. All regular members? A. All local men; yes, sir.

Q. All pay you at the rate of 50 cents? A. Yes, sir.

Q. For eight hours worked? A. Yes, sir.

Q. And if they have overtime, they pay you more? A. Yes, sir.

Q. How much more? [1,155] A. Fifty cents.

Q. At the rate of 50 cents for each overtime they pay—— A. Right.

Q. Have all six or eight of these people paid in to you every week since you were working down at Kramer-Hicks? A. As long as I have been foreman. I wasn't foreman all the time. It's just been the last three months.

Q. Since you have been foreman, have you paid in? Have you paid each week yourself? A. Yes, sir.

Q. When did you become foreman? A. Oh, I think it was about a month, month and a half after I went there.

Q. And you paid in each and every week since then? A. Since the time I started.

Q. All right. Since the time you started down at Kramer-Hicks? A. Yes, sir.

Q. Now, sir, I believe you said before that you were working at Connors Heating? A. Yes, sir.

Q. Was that the same kind of work you were doing at Kramer-Hicks? A. Yes, sir.

[1,156] Q. Were you ever foreman on that job? A. Yes, sir.

Q. Did you do any collecting on that job? A. The last job I had with him before I left, I did.

Q. With Connors, you did? A. Yes, sir.

Q. How many people were you collecting from there? A. It varied from four to sixteen, depending on the type of crew.

Q. Well, on that job, did you pay each week then? A. Not every week. No, I didn't.

Q. Well, how many weeks out of the year did you miss? A. Like I said, it just depends on my finances at the time.

Q. Well, do you know how many times out of that? A. Not offhand I couldn't give you an accurate account of how many times I had and I hadn't.

Q. Would it have been as many as five times, five weeks during the year? A. Possibly more.

Q. You just can't give us any better estimate than that? A. No, sir, I can't, because if I can afford to pay it at the present time, that is when I do it.

Q. Since January 1 of 1963, have you worked quite [1,157] regularly as a pipefitter? A. Yes, sir.

Q. Well, from that time up until now, give the Court and jury your best estimate about the number of weeks that you have failed to pay. A. I guess it would total close to a year.

Q. You mean there has been about fifty-two weeks that you haven't paid? A. Yes, sir.

Q. Now, have you ever failed to pay on a job where you were collector and the foreman? A. Yes, sir.

Q. How did you report that to the Union Hall? A. Just didn't put the name down.

Q. You didn't put your own name down? A. No, sir.

Q. You just left it off the list? A. Right.

Q. And you only put your name on the list when you paid? A. Yes, sir.

Q. Can you give me the name of a foreman that you have worked for yourself over the past three years? A. That I have worked for?

Q. Yes. [1,158] A. Ollie Kramer.

Q. Can you give me another one? A. Art Grix.

Q. Who? A. Art Grix.

Q. How is that spelled? A. G-r-i-x.

Q. What jobs were they on? A. Mendenhall Ford.

Q. Any other place? A. Washington University.

Q. Sir, on these days that you didn't pay, did you make any effort to catch up? A. No, I didn't.

Q. How old are you, sir? A. Thirty-six.

Q. You have been a pipefitter since you were how old? A. Let's see. 1957. Twenty-five.

Mr. Riddle: I have nothing further to ask this witness, Your Honor.

The Court: Step down.

(Witness excused.)

[1,159] **GEORGE TAYLOR,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Taylor, would you state your name, please? A. George Taylor.

Q. And where do you live, sir? A. No. 12 Robin Wing Lane, Hazelwood.

Q. And are you a member of Pipefitters Local 562? A Yes, sir.

Q. And how long have you been a member? A. Since 1957.

Q. And what is your present employment? A. With Guaranteed Heating and Engineering Company.

Q. Are you a foreman? A. Yes.

Q. Now, Mr. Taylor, have you ever contributed to the Pipefitters Voluntary Fund? A. No, sir.

Q. Have you never contributed? A. Prior to 1963, I believe, for a short period of time.

Q. But since 1963, you have not contributed at all? A. Right.

Q. Now, do you have a steward on your job? [1,160] A. No, sir.

Q. Does anyone on your job collect for the Voluntary Fund? A. No, sir, because I don't get involved in large construction.

Q. How many people do you have working for you? A. I believe there's about twelve people now, or less than that.

Q. Less than that? A. Right.

Q. And you have never collected for the Voluntary Fund? A. No, sir.

Q. And who acts as the steward on your job? A. I don't get involved, sir. I do service work, generally, for the contractor.

Q. I see. A. And I don't get involved with——

Q. Jurisdictional problems at all? A. Right.

Q. Now, do you know whether the men on your job contribute to the Voluntary Fund? A. Possibly. Some of them do, I know. Others don't.

Q. Has anyone ever asked you about the fact that you are not contributing to the Fund? [1,161] A. No, sir.

Q. Mr. Callanan, or Mr. Lawler, Mr. Seaton ever spoken to you about that matter? A. No, sir.

Q. And have you worked continuously through the years? A. Yes, sir.

Mr. Randall: That's all.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you say that you work on small jobs. What do you mean by that? A. Well, not necessarily a small job. I work after the men have generally left the job. I start up the air conditioning and heating and equipment like this.

Q. You start out with that? A. Right.

The Court: He starts up.

Mr. Riddle: Starts up.

The Witness: Starts up the equipment.

Q. (By Mr. Riddle) I see. Maybe I am still not clear. A. OK.

Q. Are you more in the maintenance end than you are in construction? A. Right; yes, sir; more in the maintenance end.

[1,162] Q. Are the people who work with you maintenance people also? A. I work generally by myself, sir.

Q. You usually work by yourself? A. Yes, sir.

Q. As I recall, you said you made payments into this Fund before 1963? A. Yes, sir.

Q. Do you remember the date that you ceased making payments? A. No, sir.

Q. Do you remember the reason why you ceased making payments? A. No. It's been quite a few years ago.

Q. You don't remember why you stopped? A. No; just stopped.

Q. Have you ever collected anything from any of the boys? A. No, sir, in no way, shape or form.

Q. Sir, how do you go about getting your employment? A. How do I go about getting my employment?

Q. Yes. A. I don't know, really. I started with this contractor, and I have been with him ever since.

[1,163] Q. The same contractor? A. Yes, sir.

Q. And his name is what? A. Guaranteed. Do you want the contractor's name?

Q. Yes. A. Guaranteed Heating and Engineering.

Q. You began working with him when? A. 1956.

Q. You have been with that one company ever since? A. Yes, sir.

Q. When you got your job with them, did you just apply there directly? A. No, sir.

Q. How did you get sent out? A. I think it was Mechanical Contractors Association. I went through them to get into the Union. I believe it was required that we go through the Mechanical Contractors Association. You put your name on a list.

Q. You have been with this Guaranteed Heating Company since 1956? A. Yes, sir. If my job was terminated, I would go in to the hall and put my name on a waiting list.

Q. But that's never happened? A. No, sir.

[1,164] Mr. Riddle: I have nothing further of this witness.

Redirect Examination.

By Mr. Randall:

Q. Mr. Taylor, do you receive the same wage scale as a foreman on a construction job? A. Yes.

Q. And what is that wage scale? A. $6.10 an hour.

Mr. Randall: That is all.

Mr. Riddle: Nothing further.

The Court: All right. You may be excused.

(Witness excused.)

DAVID CONDREN,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, please. A. David Condren.

Q. And——

The Court: Speak up. What?

The Witness: Condren.

Q. (By Mr. London) Speak up loudly, Mr. Condren. Where do you live? [1,165] A. 6100 Kingsbury.

Q. And you are a married man? A. Yes, I am.

Q. Are you a member of Pipefitters Local 562? A. I am.

Q. How long have you been a member, sir? A. Twenty-one years.

Q. Are you familiar with what has been called the Voluntary Fund? A. I am.

Q. Did you ever sign a card relating to contributions to the Voluntary Fund? A. I did.

Q. Did you ever contribute to the Voluntary Fund? A. I did.

Q. When did you start contributing, sir? A. Approximately on or about January 1, 1963.

Q. And did you continue to contribute to the Fund, sir? A. I did.

Q. Did you ever miss contributing? A. I did.

Q. Would you tell the Court and jury when you missed contributing to the Fund? A. About January 1, 1962, to January 1, 1963.

[1,166] Q. And was there any reason that you weren't contributing? A. Yes.

Q. Would you mind telling us what that was? A. Well, I lived in a building I was buying, and it was too small, so I bought another one, and I had to make both payments at one time, and——

Q. In other words, you might say it was for financial reasons? A. Right; financial reasons.

Q. When you weren't contributing, sir, did anybody from the Union come out and talk to you and try to get you to contribute? A. They did not.

Q. Did you subsequently continue the money you were contributing? A. Yes, sir.

Q. Who got you to do that? A. Nobody.

Q. Why did you do it? A. Because I made a pledge to volunteer, donate to the Voluntary Fund, and I kept my pledge.

Q. Did anybody come out and talk to you in any way, shape or form? [1,167] A. No, sir.

Q. Were you relieved of any jobs because you weren't contributing? A. Never.

Q. Did you lose any overtime or pay because you weren't contributing? A. I did not.

Q. Did you attend any of the Voluntary Fund meetings? A. I did.

Q. Were you familiar with some of the candidates that the Fund was supporting? A. Some of the candidates.

Q. Mr. Callanan, Mr. Lawler, Mr. Seaton ever come to you and try to get you to make contributions when you were not contributing? A. They did not.

Q. Anybody on their behalf, or on behalf of the Union, try to do that? A. They did not.

Mr. London: That's all, sir.

Cross-Examination.

By Mr. Riddle:

Q. Sir, I am not sure I understood your testimony accurately. Did you say there was one period of time that you [1,168] didn't contribute? A. That's what I said; yes, sir.

Q. And what was that period? A. January 1, 1962 to January 1, 1963; there or about.

Q. Have you paid every week since then? A. I paid up, yes, I have, but not every week. You know, not on any given date.

Q. But if you got behind, would you catch up? A. I would catch up, and I have.

Q. Are you now current? A. Yes, I am.

Q. Now, this year that you were off, did you get current on that also? A. I did.

Q. At the time that you were not paying for that year, who was your superintendent or your foreman? A. As far as I can recall, Grover McNamara.

Q. Grover McNamara? A. Right.

Q. You told him the reason you couldn't pay? A. No.

Q. You didn't tell him? A. I did not. I had no cause to, no reason to.

Q. You just didn't. You stopped? [1,169] A. That's right.

Q. And he didn't say anything to you about it? A. No, sir.

Q. What job were you working on then? A. I was working for the National Food Stores.

Q. Now, who are you working for now? A. I'm not working now. I was injured.

Q. How long have you been—— A. Seven months; February 16th.

Q. During the time that you were, this year that you didn't pay in to the Fund—— A. I didn't understand your question, sir.

Q. Well, you said you didn't pay during the year of 1962? A. That's right.

Q. You were having some financial hardships? A. Right.

Q. Did you pay your union dues and assessments through a period of time? A. I did.

Q. Keep them current all the time? A. All the time.

Q. What were they at that time? Do you remember? A. The nearest I can recall, I'd say, oh, approximately [1,170] about two and a quarter a month.

Q. Two and a quarter? A. As close as I can recall. I don't recall just exactly what they were at that time, because they have changed from time to time.

Q. How old are you now, sir? A. Fifty-eight.

Mr. Riddle: I have nothing further to ask this witness.

The Court: Anybody else?

Redirect Examination.

By Mr. Randall:

Q. What is your politics, sir? A. Pardon?

Q. Are you a Republican or a Democrat? A. I'm Democrat.

Redirect Examination.

By Mr. London:

Q. What was the salary the last week that you worked, Mr. Condren? A. Approximately $8,000.

Mr. London: Thank you.

The Court: You may be excused.

(Witness excused.)

[1,171] **JOSEPH CLAY,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? A. Joseph Clay.

Q. Where do you reside, Mr. Clay? A. 5210 Page.

Q. And are you employed, sir? A. Yes, sir.

Q. By whom are you employed? A. Corrigan Company.

Q. Corrigan and Company? A. Correct.

Q. And what is your occupation for them? A. Pipefitter.

Q. And are you a member of Local 562? A. Yes.

Q. How long have you been a member of Local 562? A. Two and a half years.

Q. And are you familiar with the Voluntary Fund? A. Yes.

Q. Did you sign a card, a Contribution Card for the Voluntary Fund? [1,172] A. Yes.

Q. And do you contribute to the Fund, Mr. Clay? A. Yes.

Q. Now, did anyone ever tell you you had to contribute to that Fund? A. No.

Q. And how long have you been contributing to the Fund? A. Ever since I became a member of the Local.

Q. During any of that time, did anyone ever talk to you and say you had to contribute, or such as that? A. No.

Q. You contributed to this Fund voluntarily? A. Yes.

Q. What is your wage scale, Mr. Clay? A. $5.60 an hour.

Q. $5.62 an hour? A. $5.60.

Q. $5.60 an hour? A. Yes.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you are now working on the Corrigan job? A. Correct.

[1,173] Q. And you have been a pipefitter for how long? A. Two and a half years.

Q. Were you an apprentice for a period of time? A. On the crash program.

Q. Sir? A. On the crash program.

Q. I see. Now, when you became a member of 562, how did you first find out about this Fund? A. Through the Voluntary Card.

Q. Well, where did you first see that card? A. When they brought it around and asked did I want to contribute anything to the Voluntary Fund.

Q. All right, sir. And who is "they" that brought it around to you? A. Foreman or steward on the job.

Q. All right. Now, do you remember the first day that you reported to work? A. Actually the first day?

Q. Yes. A. Not offhand, I don't.

Q. Sir? A. Not offhand, I don't.

Q. Was this card brought around, now, the very first day you came out on the job? [1,174] A. No.

Q. Second day? A. No.

Q. First week? A. No.

Q. How long were you on the job before it was brought around to you? A. It was brought around to me when I became a member of the Local.

Q. I'm not understanding you, sir. I thought I recall that you said that you got the card when you got out on the job, that the foreman gave it to you? A. No, I didn't state it like that, sir.

Q. All right, sir. A. When I became a member of the Local, then I became part of all the activity of the Local. Then I was a part of whatever the activities were.

Q. Well, how did you find out how much you were to pay each week? A. Well, it was described to me by the foreman who brought the card.

Q. All right. Where were you when the foreman brought the card to you? A. On the job.

[1,175] Q. All right. Now, then how long had you been on the job before he brought the card to you? A. I was on the crash program. When I became a member of the Local, then——

Q. When did you become a member? A. After I finished my training in the school.

The Court: When was that?

The Witness: Eight months, maybe after I got in the crash program.

The Court: When did you get in the crash program?

The Witness: In February of '66.

Q. (By Mr. Riddle) Well, were you working on the crash program at the same time? A. Yes; on-the-job training.

Q. On-the-job training? A. Correct.

Q. And you just continued on that same job? A. Until the job closed. Then I went to another——

Q. Yes. Maybe I'm not making myself clear, Mr. Clay. Sir, is this the case that you were on this crash program, a training program, and you were working for the Corrigan Company at that time? A. True.

Q. And you continued to work on this program for the [1,176] Corrigan Company, and then one day you became a member of 562? A. True.

Q. All right. And when you became a member of 562, that's when you were given the card by the foreman. A. I was given several cards.

Q. Well, by this so-called Voluntary Fund? A. Right.

Q. And that's when you were given the card? A. Right.

Q. All right. Now, was it on the day that you became a member of 562? A. No.

Q. Well, how many days after it was it? A. It could have been a week. I don't recall, actually. It's been so long ago.

Q. Was it before your first paycheck? A. My first paycheck was when I first got on the crash program.

The Court: Your first paycheck as a member?

The Witness: No.

Q. (By Mr. Riddle) You didn't get the card before your first paycheck? A. No.

Q. All right. Now then, after you got the card—well, [1,177] strike that. Did you make a payment to the Fund the first week that you were a member of the Pipefitters Local? A. First I read the card, then I signed it.

Q. All right. A. And then the following week I made a payment to the Voluntary Fund.

Q. All right. Well, sir, did you make the payment to the Voluntary Fund within a week or ten days after you became a member of the Local? A. After I received the card, which I don't know which it was, a week or ten

days, I signed the card, and then the following week I made my first payment.

Q. All right. Now, you made your first payment to the foreman? A. Foreman or the steward, whichever the case might have been.

Q. Well, in this case, what was the steward's name? A. I can't recall.

Q. All right. Did you make this payment to him in cash? A. Yes.

Q. Now, when the foreman brought that card around to you, or the steward, do you recall which one it was? A. No, I can't recall. It's been so long ago.

Q. Well, was any explanation made to you of the card [1,178] at that time? A. The only explanation was made that this is the card, asking would you contribute to the Voluntary Fund, and here's the card, read it. If you don't want to sign it, you don't have to, and you are not obligated to.

Q. All right. That's the only explanation made? A. That's all.

Q. How many other people working on the job with you there? A. At that particular time?

Q. Yes. A. I couldn't say offhand, because it's been quite some time.

Q. All right. Sir, do you recall if you made your first payment to this Fund in cash or by check? A. In cash.

Q. Do you remember how much it was? A. Yes.

Q. How much? A. Two fifty. I worked five days.

Q. $2.50? A. Right.

Q. All right, sir. Now, have you paid $2.50 in cash each and every Monday since that first payment? [1,179] A. No.

Q. Have you missed a day? A. Yes.

Q. How many days? A. Work days?

Q. No. How many times—well, maybe I'd better get at it this way. Have you worked regularly each week since that date? A. Certainly.

Q. Well, each week that you received a paycheck, did you make a payment into the Fund? A. Yes.

Q. And was it always $2.50, or on occasion was it higher or less than that? A. It has always, it had to be always less than that.

Q. That's because you never worked more than forty hours a week? A. No. I mean when it was more than forty hours, then I had to contribute more than that.

Q. You had to contribute more? A. Well, according to the Voluntary Fund.

Q. Yes, sir. So on occasions you had to contribute more than $2.50. A. I didn't necessarily have to. I mean I did it [1,180] because I wanted to.

Q. I see. Now, have you paid into the Union dues also in addition to this amount? A. Yes.

Q. Do you know how much those dues are? A. Three fifty a month.

Q. And you paid those, or have they been checked off by your employer? A. They come out of the check through the employer.

Q. Now, are you current on your payments to the Fund now? A. Am I current?

Q. Yes. A. Yes.

Q. Are you current on your dues and assessments into the Union now? A. Yes.

Q. Sir, have you worked on any job other than for the Corrigan Company? A. No.

Q. Sir, have you been told what uses or what purposes are being made, or what your money that you are paying

into this Fund is used for? A. Well, it's self-explanatory. Political, education and welfare.

[1,181] Q. Have you been told specifically what it is being used for? A. Yes.

Q. By whom? A. By the administrator of the Political, Welfare and Education Fund.

Q. And who is that? A. Lawrence Callanan.

Q. You talked to him about what the funds were being used for? A. I didn't personally talk about it, but it was discussed at a meeting.

Q. And he explained to you and the others at the meeting what it was being used for? A. Definitely.

Q. Did he make an accounting to you what was happening to your money? A. Not necessarily a personal accounting. I mean, I couldn't say that.

Q. Sir, have you talked to Mr. Callanan personally about that Fund? A. Have I talked to him personally about it?

Q. Yes. A. No, I have never.

[1,182] Q. Sir, during the crash program, do you recall what you were being paid an hour? A. It was on-the-job training, with the same scale as the journeymen.

Q. The same scale as the journeymen? A. Correct.

Q. Now, while you were in this crash program, or the training program—— A. Um hmm.

Q. You were making the same amount of money as you made after you became a pipefitter? A. True.

Q. Now, during that period of time, you didn't make any political contributions? A. No.

Q. And nobody collected regularly from you? A. No.

Q. And the first one you made was within the first week or two after you became a member of Local 562? A. True.

Q. Did you know of the Fund before you became a member of 562? A. I have seen the guys paying to it, but I wasn't concerned with it, because it didn't concern me.

[1,183] Q. Were you in any better financial position to pay into the Fund after you became a member than you were before? A. I was still making the same scale.

Q. Were you working the same—the job was the same? You were working with the same other members? A. True.

Q. So up until the time you became a member of the Local, you were working with other members of 562 right on the job? A. Right.

Q. And saw them voluntarily contribute? A. True.

Q. Each week? A. True.

Q. But you didn't voluntarily contribute at that time? A. I didn't know what they were voluntarily doing.

Q. Sir, is it true that you didn't decide to voluntarily pay until you became a member of 562? A. That's when I became aware of what they were doing. They just issued me a card to read and understand, as those fellows in the past had done. Up to that time I didn't even know what was going on as far as the Voluntary Fund was concerned.

Q. Did you have the same foreman on the job while you were in the crash program as you had right after you became a [1,184] member? A. No.

Q. Different foreman? A. Yes.

Q. The people who worked elbow to elbow with you were the same people? A. No.

Q. They were members of Local 562? A. Yes, they were members of Local 562, but not the same fellows.

Mr. Riddle: I have nothing further from this witness.

The Court: Anyone else?

Mr. Randall: No, Your Honor.

Mr. London: Nothing.

The Court: Step down.

(Witness excused.)

WILLIAM E. DOLAN,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Dolan, would you state your full name, please, sir? A. William Edward Dolan.

Q. Where do you live? [1,185] A. 16 Sunset Court.

Q. What city? A. Normandy; Pasadena Park.

Q. And, Mr. Dolan, are you a member of Pipefitters Local 562? A. I am.

Q. And how long have you been a member of that Local? A. Fifteen years.

Q. How old are you? A. Forty-one.

Q. Now, Mr. Dolan, what is your present employment? A. I work for the Bechtold Corporation, at the Union Electric power plant at Labadie, Missouri.

Q. Are you working as a journeyman or a foreman? A. I'm an area foreman.

Q. You are the area foreman? A. Yes.

Q. How long have you been working on that job? A. Since April.

Q. Of this year? A. Of this year; yes, sir.

Q. Mr. Dolan, are you aware of the Voluntary Fund? Pipefitters 562 Voluntary Fund? A. Yes, sir.

[1,186] Q. Have you ever attended any meetings of the—have you contributed to the Fund? A. Yes, I have.

Q. And have you ever attended any meetings of the Fund? A. Yes, I have.

Q. And when and where were those meetings held? A. At the Electricians hall.

Q. Were there any candidates present at any of the meetings? A. Yes, there were.

Q. Can you recall some of the people who were present? Some of the candidates? A. Governor Hearnes and Mr. Eagleton. And that's all I can recall.

Q. I see. Were the meetings of the Fund held separate from the meetings of the Local itself? A. Yes, they were.

Q. Now, did you sign one of the Voluntary Contribution Agreement cards? A. Yes, sir, I did.

Q. Did anyone ever tell you that it was necessary for you to contribute to the Fund?

Mr, Riddle: I will object to that as being a leading and suggestive question, Your Honor.

[1,187] The Court: Sustained as to form.

Q. When you signed the contribution card, what was said to you at that time, sir?

Mr. Riddle: I want to object to that unless he locates the person and the date and place where this so-called conversation occurred.

The Court: Well, I think he can say what was said to him. If you want to cross-examine him on the rest of it, you can do that too. All right. Go ahead.

The Witness: Would you repeat the question?

Q. (By Mr. Randall) Yes. At the time you signed the contribution card, do you recall what was said to you at that time? A. They just asked that we sign the card to the Voluntary Fund of our own free will.

Q. I see. Now, did you read the card? A. Yes, sir, I did.

Q. And then thereafter you signed the card; is that correct? A. Yes, sir.

Q. And as a foreman, have you ever told anybody that it was necessary for them to contribute to the Fund in order to work?

Mr. Riddle: I will object to the form of that [1,188] question as leading and suggestive.

The Court: Be sustained as to the form.

Q. Mr. Dolan, have you ever spoken to anyone who has worked for you, concerning the Fund? A. I don't know if I understand you correctly.

Q. Well, have you ever collected for the Fund? A. Yes, sir.

Q. All right, sir. Now, have you ever talked to any of the people who contributed to the Fund? A. Yes, I have.

Q. All right. Do you recall what you said to those people? A. No; only that their contributions were due, and so forth.

Q. Well, did you ever say anything to them as to whether or not it was necessary for them to contribute?

Mr. Riddle: I object to that question. That is leading and suggestive; the same one that he asked a little earlier.

The Court: No. He asked him whether or not it was necessary.

Q. (By Mr. Randall) Do you understand the question?

The Witness: No, sir. Would you repeat it?

Q. Did you ever say anything to these people as to [1,189] whether or not it was necessary for them to contribute to the Fund in order to work? A. No, sir, I have not.

Q. Did any of these defendants, Mr. Callanan, Mr. Lawler, Mr. Seaton, or anyone else from Local 562, ever say anything to you as to whether or not it was necessary to contribute to the Fund in order to be employed? A. No, sir, they did not.

Q. And what is your politics, sir? A. I'm a Democrat.

Mr. Randall: You may inquire.

The Court: I am about to recess for lunch. Do you want to question him first or——

Mr. Riddle: Well, we can wait until after lunch.

The Court: All right. Members of the Jury, we are about to recess until 2:00 o'clock for lunch. Bear in mind the admonition I have given you heretofore about not discussing the case with anybody. Don't permit anyone to discuss it with you. Don't read any newspapers. Don't listen to the radio or television.

All right. 2:00 o'clock.

(Thereupon at 12:42 p. m., court was in recess for lunch until 2:00 p. m.)

[1,190] Thursday, September 12, 1968.
Afternoon Session.

WILLIAM E. DOLAN,

having previously been sworn, resumed the stand, and the following proceedings were had:

Cross-Examination.

By Mr. Riddle:

Q. Mr. Dolan, at the present time, you are a foreman? A. An area foreman, sir.

Q. Area foreman? A. Yes, sir.

Q. And that's a higher position, or higher paying job than a regular foreman? A. It is.

Q. And you are area foreman for the Bechtold Corporation? Is that the company that you are working for? A. Yes, sir.

Q. How do you get assigned as area foreman by the people down at the union hall? Do they recommend you for that position? A. Yes, sir.

Q. Did they recommend you for the position of foreman when you were foreman? A. Yes, sir.

[1,191] Q. And you were a foreman for how long before you became an area foreman? A. Well, I have been an area foreman for about three years, I would say.

Q. And then you were a regular foreman for how long? A. Four or five years before that.

Q. Sir, I may not recall accurately your testimony before the lunch break, but are you presently collecting any funds? A. No, sir; no.

Q. You are presently paying into the Fund? You are presently paying, yourself, into the Fund? A. Yes.

Q. You haven't ever missed a payment? A. No, sir, I have not.

Q. Now, back in 1963, I assume that your payments there were $1.00 for an 8-hour day each week? $1.00 per day for an 8-hour day? A. Yes, sir.

Q. For a total of $5.00 for a regular 8-hour day—40-hour week, rather? A. Yes, sir.

Q. Do you recall what happened January 1, 1966, that caused a change in that amount of payment? [1,192] A. What do you mean, sir, by what happened?

Q. Well, according to the evidence here, as represented by the chart, there was a decrease from $1.00 per day down to 50 cents per day. Do you recall when that came about? A. Yes, sir, I do.

Q. Do you recall what caused it to come about? A. Not offhand, I don't.

Q. Well, were you at a meeting when it was discussed, or when that decision was made? A. I was at the meeting, yes, sir.

Q. Was this a Union meeting? A. No, sir.

Q. Where was it held? A. At the Electricians hall.

Q. Who presided? A. Mr. Steska.

Q. Mr. Steska presided. Is he the president of the Union? A. He is president of our local Union; yes, sir.

Q. Was he president at that time that he presided, at the time that you referred to and testified about? A. Yes, sir.

Q. Anybody else, preside, other than Mr. Steska? A. I really don't remember, sir.

[1,193] Q. He's the only one that you recall having been —— A. He's the only one I recall; yes.

Q. Did he conduct the meeting? A. It's hard to remember back. When you talk about conducting the meeting, yes, I would say so.

Q. He wasn't director of the Fund at that time, was he? A. No, sir, he was not.

Q. He's never been a director of the Fund, has he? A. No, sir.

Q. Sir, at about that time, do you recall if there was an increase in your assessments that the Union was making upon its members? A. Yes, sir.

Q. Do you recall what the amount of the increase in the assessment was? A. Yes, sir. At the time of the meeting, we were paying two and a half per cent assessment, and it was increased to three and three-quarters per cent.

Q. At the same meeting? A. Yes.

Q. Presided over by Mr. Steska? A. To the best of my knowledge, yes.

Q. Now, the effect of this, you say three and a third—or what rate of increase did you say it was? [1,194] A. Three and three-quarters.

Q. Three and three-quarters?

The Court: That wasn't the rate of increase.

Q. (By Mr. Riddle) That was the amount of the new assessment? A. That's right. The rate of increase was one and a quarter per cent.

Q. Yes, sir. Now, sir, that increase in assessment would cost you about how much additional each day? A. 50 cents. Roughly 50 cents.

Q. Roughly 50 cents a day? A. Yes, sir.

Q. So the net amount of the cost to you was nothing. One went up and one went down? A. Yes, sir.

Q. This was explained to you and the others there, that this increase in assessment would not cost the people a penny more? A. I really don't remember.

Q. This was the interpretation that you had of it? A. Yes, sir.

Q. Did they go into effect on the same payroll for the same pay period? A. Yes. Well, I don't know when it went into effect [1,195] exactly; no.

Q. Well, if not on the same payroll period, about the same time? A. Yes, sir.

Q. Now, thereafter you continued, I suppose, to pay the reduced rate into the Fund? A. Yes, sir.

Q. And the increased rate in the assessment? A. Yes, sir.

Q. Were the same people present who voted on those propositions? A. Yes, sir, they were.

Q. Mr. Steska provided—or presided at both of them, as I recall you said? A. Mr. Steska never presided at both of them. He presided at a regular or a special meeting that was called for this purpose, as I recall, and—

Q. For this purpose? A. Of increasing the assessments.

Q. And decreasing the other payments? A. Well, when the special meeting was adjourned, then we went into the business of decrease in the Voluntary Fund. Now, whether —I don't think Mr. Steska presided at this meeting.

[1,196] Q. Who do you think presided at it? A. Mr. Lawler, I would imagine, but I really can't say for sure.

Q. Yes, sir. You haven't missed a payment on your assessment, or payment on this voluntary amount either at any time, or for any period? A. No.

Mr. Riddle: I believe that's all.

The Court: Anybody else?

Mr. Randall: No questions, Your Honor.

The Court: Step down, Mr. Dolan.

(Witness excused.)

JOSEPH JAMES QUINN,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. Please state your name. A. Joseph James Quinn.

Q. Where do you live, Mr. Quinn? A. Route 1, Box 196, O'Fallon, Missouri.

Q. Do you have a family? Married? A. Wife.

Q. Own your property out there where you live, Mr. Quinn? [1,197] A. Yes, sir.

Q. Mr. Quinn, are you a member of Pipefitters Local 562? A. I am.

Q. Where are you employed now, Mr. Quinn? A. Mark Twain Shopping Center, for Gross Engineering Company.

Q. How long have you been on that job? A. About three months.

Q. How long have you been a member of the Union? A. Oh, about twenty-three years, twenty-four years.

Q. Mr. Quinn, are you familiar with what has been referred to as the Voluntary Fund? A. Yes, sir.

Q. Are you familiar, sir, with the Voluntary Fund Contribution Cards? A. I think so.

Q. Have you ever signed a Voluntary Contribution Card? A. I have.

Q. Do you remember when that was, Mr. Quinn? A. I don't know exactly. Its been a long time ago.

Q. You signed one, or more than one? A. One, that I know of.

Q. Did you contribute money into the Voluntary Fund? A. I did.

[1,198] Q. And are you presently contributing into the Voluntary Fund? A. I am not.

Q. When did you stop contributing into the Voluntary Fund, Mr. Quinn? A. 1965.

Q. And do you know about when in 1965, sir? A. Well, I have the last check right here that I sent in. December 31, '65.

Q. All right. And from December 31st, '65, to the present, have you contributed anything to the Voluntary Fund? A. Nothing.

Q. Have you been working as a pipefitter from December 31, 1965, to the present? A. I have.

Q. Steadily? A. Steadily.

Q. What is your position on your present job, Mr. Quinn? A. Area foreman.

Q. How many men do you have that you oversee? A. Twelve, right now.

Q. Do you know if any of those men contribute to the Voluntary Fund? A. Yes, I do.

[1,199] Q. How do you know that? Do you collect for the Voluntary Fund? A. Yes, I do.

Q. And do you send the money that you collect from the men working under you, down to the Voluntary Fund office? A. Yes, sir.

Q. And you, yourself, do not give? A. No, sir. And I tell them when I ask them if they want to donate to the Voluntary Fund, if they want to donate it. "I don't give myself. It is up to you," and they willingly give it to me, and I collect it.

Q. Do I understand you to say, Mr. Quinn, when you present these cards to a man for his signature, you tell them that you, yourself, do not give? A. I definitely do.

Q. Mr. Quinn, may I ask you if there was some reason for your stopping your contributions to the Fund? A. Definite reason.

Q. Would you mind telling us what that was? A. Well, I run for state Senator in the Twenty-Sixth District, and when this Fund started, naturally it was supposed to be for members, as well as anybody else, or for charity also. And I went down, and I got no backing out of this Political Fund, so I got mad and I wouldn't pay it no more.

[1,200] Q. Did you tell anybody the reason that you were stopping your payments? A. Yes, I told Mr. Callanan.

Q. What did you tell him? A. I told him I wouldn't pay it no more.

Q. What did he tell you? A. He said, "It's voluntary. You don't have to."

Q. And the reason then, we might say, that you stopped contributing to the Voluntary Fund was because you disagreed with the politics that they were following? A. That is right. I always thought it was a good Fund.

Q. When they didn't support you, you decided—— A. I wouldn't pay them. It was my money going in. I thought I ought to get something back for my campaign.

Q. Ever since you stopped paying, has anyone come out and talked to you to try to get you to start paying? A. No.

Q. Have you been denied any jobs, or denied any overtime? A. No. I have been a boss on every job.

Q. How many men contribute on your job that you are now working on, Mr. Quinn? A. Let's see. Ten.

Q. How many men are working on that job? [1,201] A. Twelve. No, sir. There's nine. Myself included, there's nine contributing.

Q. Contributing. And three of you who do not contribute; is that right, sir? A. Well, I don't know if they mail them in. There is one, I know, that don't contribute. It is my boss's son. I have him on the job with me, and he doesn't pay it.

Q. What is his name, sir? A. Hanford Gross.

Q. Mr. Quinn, as an area foreman, you receive some pay over and above the regular journeyman scale? A. My scale is $7.98 an hour. That is in Zone 2.

Q. What is the rate of a journeyman's rate in Zone 2, if you know? A. 35 cents an hour less.

Q. And you are receiving this premium? A. I am receiving the premium.

Q. Did you lose any of this premium pay because of your not contributing to the Fund? A. No, sir.

Mr. London: Thank you. You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you had paid into this Fund for a number of months? [1,202] A. From the time that it started. I

thought it was a good thing, and I paid into it up until '65.

Q. And when were you a candidate for office? A. In 1965.

Q. And you were running for what position? A. State Senator of the Twenty-Sixth District.

Q. Now, what efforts did you make to get the support of the Fund? A. Well, I went down and seen our officers, Lawrence and Mr. Lawler, and asked them did they have anybody in mind for that office, and they told me no, to go ahead and file. And I filed. And when it come time to —well, I think it was about three months before the primary, I went down and I seen Lawrence, Mr. Callanan, and he told me he wasn't going to back me.

Q. So you actually went down on two different occasions, once when you talked to Mr. Lawler and Mr. Callanan? A. Yes. This was around Christmas-time when I talked to them.

Q. And the second time you went back and you talked to Mr. Callanan? A. This was around, I imagine it was about in February or March.

Q. Of '65? A. Yes, sir.

[1,203] Q. Wait a minute. That would be '66. '66? A. That would be '66.

Q. Yes. Now, as a member of this Fund, did you make an effort to call all other members of them together in order to present your platform and your candidacy? A. No, I did not.

Q. As a member, didn't you have a right to call this entire membership together? A. Yes, I did, but I failed to do so. I guess I was a little green about politics, I'll tell you. I didn't know how to go about it.

Q. Yes, sir. Well, sir, is that the reason that you didn't call them together? A. Well, I didn't think I had to. As

a member of 562, I thought that I would naturally get the backing.

Q. And you thought you were going to get the backing, until Mr. Callanan told you no? A. That is true.

Q. And you thereafter—— A. And I told him off; I wouldn't pay no more.

Q. You wouldn't pay any more into the Fund? A. No. And he told me, "Well, that is your privilege."

Q. All right. Now, sir, after he told you that he wouldn't back you, did you think about talking to the members [1,204] of the Fund, getting a meeting together, and letting them hear from you? A. Well, I did, but my wife was against me running, to begin with, so I figured, well, I just had a lost cause here, that's all. The last six weeks I spent all the money we had, and I had to quit anyhow, so——

Q. Sir, did you not make an effort to call the members of the Fund together? A. No, I did not.

Q. No. I am asking you, sir, the reason, if the reason that you didn't call them together is that you knew that Mr. Callanan's word was the final word on it? A. Well, I figured that could be. I wouldn't say for sure, but just like you say, I should have called the members, because I believe I may have got the members with me.

Q. At that time, you considered Mr. Callanan's word to be the final word, so you just forgot about it?

Mr. Daly: I will object to that, Your Honor. It is something not in evidence.

The Court: It is cross-examination. He may answer.

The Witness: State the question.

Q. (By Mr. Riddle) At that time, when you left Mr. Callanan's office,—— A. I was pretty mad. I really didn't care to consult [1,205] anybody then, I'll tell you, and I had

my wife on me besides, so I figured, well, it is a good time to quit anyhow. I am not cut out to be a politician, I'll tell you. I'm glad I didn't get elected.

Q. Yes, sir. Now, all the time that you were paying in this Fund, up until 1966, did you know what was happening to the money? A. Well, I did know that some of it was going for candidates, and some of it for charity.

Q. Well, up until that time, have you ever had a voice in how the money was to be spent? A. Oh, we could get up on the floor, and if we had somebody that was running for office, or somebody that you would like to be elected, you could get up and bring it up; sure.

Q. Up on the floor. The floor of what? A. Of the Local.

Q. Of the local Union's meeting? A. Yes, sir.

Q. At their regular meetings? A. Yes, sir.

Q. At these regular meetings, were the affairs of the political efforts discussed, a discussion as to who would be supported and who would not be supported? [1,206] A. Not so much, to my knowledge. I don't remember any of that hardly ever coming up. Well, I never attended very many meetings, so I didn't know a lot that was going on.

Q. Sir, you mentioned that your boss's son didn't pay into the Fund? A. That is true.

Q. Who is your boss? A. Mr. Gross. With Gross Engineering Company.

Q. All right. A. And his son is going to college, and during the summer, while home from college the last two years, he had worked with us.

Q. Sir, were you at the meeting when the decision was made to reduce the Voluntary payments from $1.00 to 50 cents? A. No, sir, not to my knowledge.

Q. You never went—do you remember when that reduction went into force and effect? A. I guess I really didn't pay much attention to it. I didn't care when it went.

Q. You paid it up until January of '66, didn't you? A. '65 was the last payment I made; December 31st of '65, I believe it was. I got the check right here.

Q. Do you have your check there with you? A. Yes, sir. Right there was my last payment. These [1,207] are my other ones. You can see.

(The witness handed checks to Mr. Riddle.)

The Witness: Sometimes I would go five, six months before I'd ever send anything in, when I was paying it, and nobody said anything to me about it neither.

Q. When you figured up the amount of the check, how did you go about that? A. Well,——

Q. The amount of your last check was $102.00 even? A. My wife used to mark it down every week. I started to bring that book with me, but I failed to do so.

Q. You have a book? A. I have a book of every day I worked when I was paying into it, and I thought it was a fine thing, she kept a record of it, and then we let it go— Well, you can see there six, seven months, eight months, and we mailed a check.

Q. Sir, did you keep this book with your regular dues book? A. No. That's separate. I have my book at home. I started to bring it. I should have, I guess.

Q. My question was, "Did your wife also keep a record of your payment of the assessments?" A. No. That's taken out. This money is taken out. The company takes that out.

[1,208] Q. Well, that wasn't always true? A. No, but I have only been married four years, too, and I used to send it in myself, and I didn't keep them checks. I'd throw them away. I'd keep them so long. When I thought they were all right, I'd destroy them.

Q. Sir, these checks that you handed me, did you use them for income tax purposes? A. No, sir, I did not.

Q. Why didn't you? A. Because it was voluntary. I was donating this money.

Q. You didn't show it as a donation? A. No, sir, I did not. My income will show that, too.

Q. Were you told not to do it? A. Well, I know that you can't take off anything I am giving from my heart.

Q. Sir, let me ask you this: Were you told not to take a deduction on your tax return for these payments? A. I don't never remember being told anything like that. I just know that I ain't supposed to take off anything that's not legal, and I try to live up to the law, and this is the reason I didn't.

Q. Sir, these payments that are paid into the Fund, have you ever heard them referred to as assessments? A. No, sir. This has always been voluntary in my paper. [1,209] When I collected, I got a book that shows "Voluntary" right at the top of it, and I show it to the men. I say, "Now, if you want to pay in, all right. If you don't, all right too. It don't make no difference to me, because I don't pay it."

Q. You have never heard them referred to as assessments? A. No, sir. When this thing started out, I was, well, in favor of it, and it was always voluntary, to my knowledge; never an assessment.

Mr. Riddle: All right. I have nothing further of this witness.

Redirect Examination.

By Mr. London:

Q. May I see those checks for a moment? A. Yes, sir.

(The witness handed checks to Mr. London.)

(Thereupon defendant Union Local 562's Exhibits V, W, X and Y were marked by the reporter for the purpose of identification.)

Q. Mr. Quinn, I am going to hand you that which has been marked for identification purposes as Local 562's Exhibits V, W, X and Y, and ask you, sir, if you can identify those four documents for me? A. These checks?

Q. Yes, sir. Just for the record, sir, tell us again [1,210] what they are. A. These are checks that I had my wife make out, which she kept a record, of the Voluntary Fund, and we mailed them in whenever we saw fit to mail them in.

Q. Directing your attention, sir, to Exhibit V, would you tell us the date on that check, sir? A. Exhibit V is January 1, 1965. Do you want the amount?

Q. Please. A. The amount to the Pipefitters Voluntary Fund, $63.00.

Q. It is payable to the Pipefitters Voluntary Fund? A. Voluntary Fund; yes, sir.

Q. And the signature on that check, sir? A. Irene B. Quinn, which is my wife.

Q. And would you turn it over on the reverse side, please? Does it bear an endorsement? A. "Pay to the order of City Bank, Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund." 3-17, the date is on there too.

Q. I am going to hand you, sir, now Exhibit W. Give me the date. A. February 21, 1965.

Q. The amount? A. Pipefitters Voluntary Fund, $40.00.

[1,211] Q. Payable to the Pipefitters Voluntary Fund? A. Signed by Irene B. Quinn, payable to the Pipefitters Voluntary Fund.

Q. And the endorsement on the reverse side, sir? A. "Pay to the order of City Bank, Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund."

Q. Handing you now Exhibit X, would you give me the date? A. July 15, 1965.

Q. And who is it payable to? A. Pay to the order of Pipefitters Voluntary Fund.

Q. And the amount? A. $98.00.

Q. Signature? A. Irene B. Quinn, my wife.

Q. You recognize that signature? A. Yes, sir.

Q. And the endorsement? A. "Pay to the order of City Bank, Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund."

Q. I hand you now Exhibit Y. The date, sir? A. December 31, 1965.

Q. And payable to whom? A. Pipefitters Voluntary Fund.

Q. And the amount? [1,212] A. $102.00.

Q. Signature? A. Irene B. Quinn, my wife.

Q. And the endorsement? A. "Southwest Bank of St. Louis, Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund."

Mr. London: If the Court please, I offer Local 562's Exhibits V, W, X and Y into evidence.

Mr. Riddle: No objection from the Government, Your Honor.

The Court: Be received.

(Whereupon defendant Union Local 562's Exhibits V, W, X and Y were received in evidence.)

Q. (By Mr. London) One question, Mr. Quinn. When you stopped contributing to the Voluntary Fund, did you stop paying your Union dues and assessments? A. No, sir.

Q. You continued paying your Union dues and assessments, sir? A. Well, at that time, I believe they were being taken out by the company.

Q. And so you are still paying those? A. Naturally. This is my bread and butter.

Mr. London: Thank you.

[1,213] **Recross-Examination.**

By Mr. Riddle:

Q. Do you know what those checks total? A. No. I never did add them up. My wife can tell you though. She is my bookkeeper, and everything.

Q. Did you make any political contributions that year, 1966? A. Personally?

Q. Yes. A. No, sir, I did not.

Q. What about the next year, '67? Did you make any political contributions? A. No, sir.

Q. What about 1968, this year? A. None.

Q. Your testimony is that you have never made a political contribution to the party of your choice, or to any candidate? A. No, sir, I have not.

Q. Since the last contribution that you made to this Political Fund? A. That is true.

Mr. Riddle: That's all.

The Court: Step down.

(Witness excused.)

[1,214] **ARTHUR E. MURPHY,**
being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? A. Arthur E. Murphy.

Q. Your address, Mr. Murphy? A. 3900 Cordes Drive, Mehlville, Missouri.

Q. Is that in St. Louis County? A. It is.

Q. And with whom do you live there, sir? A. With my wife and five children.

Q. Now, are you employed at this time, Mr. Murphy? A. I am.

Q. For whom are you employed? A. Kramer-Hicks and Company, mechanical contractor.

Q. And what is your position with Kramer-Hicks? A. I'm the field superintendent, or known as the riding boss.

Q. How long have you held this position? A. Approximately six months.

Q. And prior to that, what position did you hold for Kramer-Hicks? A. General foreman.

[1,215] Q. How long have you been general foreman? A. Approximately a little over two years.

Q. And before that two-year period, by whom were you employed? A. Natkin and Company.

Q. How long have you been with them? A. About eleven years.

Q. And what position did you hold for Natkin? A. Most of the time, as general foreman or area foreman.

Q. I see. Now, are you familiar with the Voluntary Fund? A. Yes, sir.

Q. And do you contribute to the Fund? A. I do.

Q. And, Mr. Murphy, have you made some collections for the Fund? A. I have.

Q. And in doing the collection, have you distributed the Voluntary Fund Cards to people who came out to work? A. I did.

Q. All right. When you gave the men the card as they came out to work, what, if anything, did you tell the men about the card? A. I told them they could read the card. I thought it was self-explanatory. Anything they did not understand about [1,216]. it, I would try to explain to them.

Q. Did you ask them to sign it, or not sign it? A. I asked them if they would like to sign it, that's right.

Q. Did most of the men who came to work for you sign the card? A. As I can remember, none have ever refused.

Q. Then you collected the money; is this correct? A. I did.

Q. After you collected the money, what, if anything, did you do with the money? A. Well, I would take it and collect it, and then I would either turn it in myself, or as a convenience, if some of the members was going down to the Local at the office of the Voluntary Fund there, which was in the building of the Local, I'd have them take it down for me.

Q. I see. And are you now collecting for the Fund? A. I collect it after the various foremen on the job do. They collect it, and then I pick it up as a convenience.

Q. Now, as field superintendent for Kramer-Hicks, how many people do you have under you, Mr. Murphy? A. Approximately eighty-five.

Mr. Daly: I have no further questions.

What political party do you belong to, Mr. Murphy?

[1,217] A. Well, I favor the Democratic.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do you have men working on your job now who are out-of-town members? A. Yes, I do.

Q. Out of the eighty-five men, what percentage of them are out-of-towners? A. Oh, I don't know the exact number. Let me think. I'd say there is a good possibility that there's fifteen or twenty of them.

Q. Fifteen or twenty? A. Yes, sir. I would say this is approximate.

Q. And those fifteen or twenty out-of-towners are paying into the Fund how much now? Do you know what the rate is? A. Yes; $2.00 a day.

Q. $10.00 a week for a 40-hour week? A. Yes, sir.

Q. And the regular members are paying into it what? A. 50 cents a day.

Q. Sir, have you had any conversation with any of the out-of-towners about the disparity, or the difference in this rate? A. No, sir.

[1,218] Q. You have never talked to any of them about the spread between 50 cents and $2.00? A. They have never brought it up to me, sir; no, sir.

Q. Do you know if they are aware that there is a spread? A. Oh, yes, sir.

Q. Sir, do you know how the out-of-towners find out, the ones that work on your job, find out that they are to voluntarily contribute $2.00 a day? A. May I ask you to rephrase that? I didn't understand you, sir.

Q. Do you know how the out-of-towners find out that they are to voluntarily contribute $2.00 a day? A. Well,

if they had not worked on any other job previous to coming in the company, they are explained to them on the job. Now, this is one method. There may be other methods though of them finding out, but this is my dealings with it. But the foreman of the job would explain it to them if I hadn't. I could not, do not see all the men.

Q. Do you make an explanation to any of the out-of-towners as to this rate? A. If any of them ask me, sir, yes, sir.

Q. Have you made an explanation to the $2.00 a day they pay and the 50 cents a day that the regulars pay? A. They have never questioned me on it.

[1,219] Q. Did you volunteer to tell them there was a difference? A. I didn't volunteer anything without being questioned on it.

Q. Well, now when you talked to them, did you tell them, now, Mr. Out-of-Towner, those of us here in the St. Louis Local, we just decided to voluntarily pay 50 cents a day. Now, some out-of-towners voluntarily pay $2.00 a day. Now, which one would you rather pay, 50 cents or $2.00 a day?"

Did you ever make that clear to them? A. I never had any conversation along that line, sir, at all with them.

Q. They didn't have a choice to volunteer to pay 50 cents a day? A. To my knowledge, I didn't know of any that they had or had not; no, sir.

Q. If they had a choice of paying less than $2.00 a day, namely 50 cents a day, that you don't know about that? A. I don't know about that; no, sir.

Q. The only choice of contribution made to them was the $2.00 a day charge? A. The only choice that I was telling you, in all previous dealings, that all the out-of-towners always donated $2.00 a day.

Q. Did any of them want to donate a little bit more [1,220] than $2.00 a day? A. Not to my knowledge, no, sir.

Q. No, sir. And none of them offered to donate less than $2.00 a day? A. They had never questioned me on it.

Q. Are you familiar with the term "doby"? A. Oh, that's a slang word that is used through the trade; yes, sir.

Q. It is widely used among the people on your jobs, isn't it? A. Not necessarily. I think it is more in the line, what we call in the pipeline business, more than anything else.

Q. What is your understanding of what a doby is? A. Well, I tell you I'd really like to have an interpretation to me sometime. Who explained it or who started the word, I really don't know.

Q. Sir, could the people, the ones that you have heard, do they call this $2.00 a day payment a doby? A. Not to my knowledge; no, sir, not the ones that I am in contact with.

Q. The ones that you are in contact with use the word doby? A. No, sir.

Q. They don't? [1,221] A. No, sir, they don't use the word doby; no, sir.

Q. Sir, do you remember when your Voluntary payments were reduced from $1.00 a day to 50 cents a day? A. The date, you mean, sir?

Q. Yes. A. From a dollar a day to fifty cents a day. It seems like it could have been back about two years or so, I think.

Q. January 1 of '66? A. That sounds about right. I say that's as close as I could remember about it, sir.

Q. Do you remember when the assessments of the Union went up? A. The assessments of the Union? Or the take-out?

Q. Yes. A. Approximately around the same time, I'd say.

Q. The same time? A. I'd say so; yes, sir.

Q. They went up 50 cents, and the others went down 50 cents? A. Well, I don't know if it was in that proportion, but if you say so—I never did measure it out in proportion, dollar to dollar.

Q. When there was a decrease from 50 cents from the regular members, was there any complaint about that on the job? [1,222] A. No, I don't think so. I don't think anybody, that I can recall.

Q. On the day that you announced that the contributions hereafter would be 50 cents a day—— A. Um hmm.

Q. ——did anybody decide that they wanted to continue to pay a dollar a day? A. Not to my knowledge; no, sir.

Mr. Riddle: I have nothing further of this witness.

Mr. Daly: No questions.

The Court: Step down.

(Witness excused.)

ROBERT SANDERS,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Sanders, would you state your full name, please, sir? A. Robert H. Sanders.

Q. Where do you live? A. 7619 Folk, in Maplewood.

Q. Do you own your home there, sir? A. Buying it.

[1,223] Q. Mr. Sanders, are you a member of Pipefitters Local 562? A. Yes, sir.

Q. And how long have you been a member, sir? A. Twenty-seven years, this month.

Q. And where are you presently employed? A. Labadie Powerhouse.

Q. And how long have you been on that job, sir? A. February this year.

Q. Now, Mr. Sanders, are you familiar with the Pipefitters Voluntary Fund? A. Very much so.

Q. Did you ever sign a Contribution Card? A. Yes, sir.

Q. Have you paid or contributed into the Fund? A. Part-time, yes; part-time, no.

Q. All right. Would you tell us when you contributed, and when you have not contributed, sir? A. Oh, when it first started I contributed for a while off and on, and then I just quit paying it.

Q. How long has it been since you made your last contribution? A. Oh, about, I don't know; a year, or a year and a half; I don't know how long it's been; quite a while.

Q. I see. Now, sir, since you have quit contributing, [1,224] and during the other times when you didn't contribute, did anyone speak to you about the fact that you were not contributing to the Voluntary Fund? A. No, they didn't bother me.

Q. No one came to you at all? A. No.

Q. Have you been working all the time? A. Every day.

Q. And what is your politics, sir? A. Democrat.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, over what period of time did you pay into the Fund? A. 1963 and part of 1964.

Q. '63 and a part of '64? A. Yes, I guess that's what it was.

Q. Do you remember the job that you were on that you decided to quit paying? A. I was working for Natkin and Company at the time.

Q. On the Portage des Sioux job? A. No, no.

Q. What job were you on? [1,225] A. Well, I was a shop foreman. I was working for Natkin and Company.

Q. And they have a general office around here? A. Yes, sir.

Q. Is there any particular reason why you stopped paying? A. Oh, I had a little financial trouble. I could use the money, and I was using it for that.

Q. Sir, you said up until about the middle of 1964? A. Somewhere in that area.

Q. You paid. Did you pay regularly up until then? A. No.

Q. You didn't pay regularly up until then? A. No.

Q. Sir, do you know a foreman by the name of Harold A. Foley? Hal Foley? A. Yes, sir.

Q. Who is he? A. He is my general foreman on the job where I am working.

Q. Now? A. Yes, sir.

Q. How long have you been working on that job under him? A. He started about three months ago, I believe. I was there since the last of February, or the first week in March, something like that, and he come on the job a few months later.

[1,226] Q. Sir, at the time that Mr. Foley was your boss, did you make any payments directly to him? A. No, sir.

Q. Never did? A. Never did.

Q. Did you ever try to make any payments to him? A. No, sir.

Q. Did he ever refuse to take any? A. No, sir.

Q. Sir, I want to ask you a specific question. I want to ask you if, on one occasion, you went up to Mr. Foley and asked him if you could pay some money into the Fund, and that Mr. Foley wouldn't accept your money because it was not OK'd by Director Callanan? Did that happen? A. Oh, let's see. I think I forgot about that.

Q. Yes, sir. A. At another job.

Q. Yes, sir. Tell the Court and jury about that. A. That was at Portage des Sioux.

Q. Yes. A. I told him I was a little better financially fixed; if it is all right if I started paying this dues, and he said he'd let me know, and after he told me that, well, I had no word from him for a couple weeks, and come back and said it [1,227] was OK if I didn't want to pay it, OK. As far as I——

Q. What did he say—Who did he say he talked to? A. I can't remember. I can't remember if he said he talked to anybody.

Q. Sir, did he tell you that he wasn't to accept your money unless it had been OK'd by Director Callanan? A. Well, I can't recollect this at all. All I know is he said I didn't have to pay it.

Q. Did he say why you didn't have to pay it? A. No, sir. There was no prolonged conversation about it at all. It was just this is it, and that's it.

Q. Did you offer to pay him on more than one occasion? A. No.

Q. Were you the only person not paying on that job? A. I don't know. I don't inquire into anybody else's dealings, what they do. I don't know.

Q. Have you ever talked to Mr. Callanan about paying into this Fund at any time? A. Yes, I talked to him.

Q. When did you talk to him? A. Oh, about a year and a half ago, two years ago.

Q. Where were you when you talked to him? A. Down at the Union hall.

Q. And what was the purpose for you talking to him? [1,228] A. Well, my main reason was to see was it all right. I hadn't paid for a while, and if I wanted to go down and pay it, I still was financially not fixed, so I just talked to him about it, about paying it, that is all, and he said, well, wait till you—"Don't pay it."

Q. Sir, were you behind at that time with your payments?, A. Yes, sir.

Q. And you were worried about it? A. Worried about it?

Q. Yes, sir. A. No, I wasn't worried about it.

Q. Were you concerned about it? A. Well, I was, beings I was working with the other men and they were all paying it, and I wasn't, I was concerned that way.

Q. So you decided, because of that, you'd better go down and talk to Mr. Callanan about it? A. Yes, let him know.

Q. And did you? A. Yes.

Q. And you told him you had some financial difficulties and weren't in very good shape, and didn't want to pay it? A. That's right.

Q. And wanted to be excused from paying it? [1,229] A. That's right, I told him I'd pay it, as I wanted to pay it now week by week, but when I could see myself clear to pay it, periodically.

Q. Yes, sir. And then did you finally get yourself straightened out? A. Yeah, I got straightened out pretty good.

Q. Have you caught up completely? A. Not too completely, but I'm caught up pretty fairly well now.

Q. Are you still catching up? A. I don't think I will ever catch up.

Q. How much are you behind now? A. Are you talking about the payments by me into this Fund?

Q. Yes. A. Oh, I don't know. I haven't any idea.

Q. So you, sir, when you went out to this job at Portage des Sioux, and Mr. Foley was your foreman, did you and Mr. Foley talk about Mr. Callanan's instructions about your payments? A. No, sir.

Q. You did not? A. No, sir.

Q. Well, now, did you give Mr. Foley any explanation [1,230] as to why you weren't paying? A. No, sir.

Q. Did you tell him that you had been approved by Mr. Callanan for exemption? A. No, sir.

Q. You didn't tell Mr. Foley that? A. No, sir.

Q. Who did you tell that you had talked to Mr. Callanan and gotten permission not to pay? A. I didn't tell anybody.

Q. You didn't tell your foreman who came around to collect? A. Nobody asked me to pay. I didn't have to.

Q. Yes, sir. Well, sir, if you didn't have to pay, why did you go in to talk to Mr. Callanan in the first place? A. Well, because we needed finances for whatever they were using it for, and to help keep us going, and everything like that, so I just went in to tell him that I couldn't pay for a while. That's what there was to it.

Q. You felt that you better make some explanation? A. Yes, sir.

Mr. Riddle: That's all.

The Court: Any redirect?

Mr. London: One moment.

[1,231] Mr. Daly: One moment, sir.

Mr. Randall: No questions.

The Court: All right. Step down. Call your next witness.

(Witness excused.)

R. L. KNEEMILLER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, please. A. Robert Kneemiller.

Q. Where do you live, Mr. Kneemiller? A. 3102 St. Nathan, St. Ann.

Q. Do you own your property out there? A. Yes, sir.

Q. Are you a married man with a family? A. Yes, sir; four children.

Q. Are you a member of Local 562, sir? A. Yes, sir.

Q. How long have you been a member? A. About seventeen years.

Q. Where are you working now, Mr. Kneemiller? A. I am the riding boss for a contractor here in [1,232] St. Louis.

Mr. Riddle: I can't hear you, sir.

The Witness: I am a riding boss for a contractor here in St. Louis.

Q. (By Mr. London) What is the name of that contractor? A. Sodemann Heat and Power.

Q. Mr. Kneemiller, are you familiar with the Voluntary Fund? A. Yes, sir.

Q. Do you contribute to the Fund? A. Yes, sir.

Q. Did you sign a card for a contribution? A. Yes, sir.

Q. Do you do some collecting for the Fund? A. Yes, sir.

Q. And how do you go about doing the collecting that you do, sir? A. I receive it from the foremen on the job.

Q. Do you have some foremen working under you? A. Yes, sir.

Q. And they actually collect the money from the men, and then they turn it over to you; is that correct? A. Yes, sir, that's correct.

Q. And you bring it down to the Fund office? [1,233] A. Yes, sir.

Q. Do you hand out any of the cards to the men that, on your job, sir? A. No, sir.

Q. Do you know who does? A. The foremen usually do. I leave the cards with the foremen.

Q. Have you ever worked on a job where anybody didn't contribute into the fund? A. No, sir, not that I know of.

Q. Ever work with an August Heideman? A. Well, this is prior to—this goes back to an apprenticeship. I worked with him. He did not contribute.

Q. Let me ask you, sir; do you ever attend any meetings of the Voluntary Fund? A. Yes, sir.

Q. Where are these meetings held, sir? A. It was at Electricians hall.

Q. Do you recall, sir, what is done at these meetings? A. We talk over our political things of who we want to support, or for the welfare of someone that we want to help.

Q. Do you have a voice—do you and the other members have a voice in the discussion that takes place?

Mr. Riddle: I object to that.

[1,234] The Witness: Yes, sir.

Mr. Riddle: I object to that. That calls for a conclusion. He can state whether there are votes, or minutes, or that sort of thing. That is a conclusion.

The Court: It was leading. Don't ask him any leading questions, Mr. London.

Q. (By Mr. London) Let me ask you about the procedure at these meetings, Mr. Kneemiller. Do members at these meetings have an opportunity to speak? A. Yes, sir, they do.

Q. Do candidates ever appear at these meetings? A. Yes, sir. I have heard some.

Q. And who are some of the candidates you have heard, sir? A. To pick a name for sure, I think I heard Long, but the rest right now I couldn't come up with. No, Long wasn't. Who else? To pick a specific name right now, I cannot.

Q. Was there any kind of a screening committee of this Fund, sir? A. Yes, sir.

Q. What do you mean by screening committee? A. That they interview him to see how he'd feel for the majority of us.

Q. They'd discuss the various candidates? A. Yes, sir. I'd say interview them.

[1,235] Q. And determine their position as to labor? A. Yes, sir.

Mr. Riddle: I object to this leading and suggestive type of question, Your Honor, of his own witness.

The Court: All right. Don't lead him.

Mr. London: I have no further questions.

Cross-Examination.

By Mr. Riddle:

Q. Your name is N-i-e-m-i-l-l-e-r, sir? A. No, sir. It is K-n-e-e.

Q. K-n-e-e? A. m-i-l-l-e-r.

Q. Sir, you said that as far as you know, every person working on your jobs, and jobs under your supervision had paid into this Fund? A. Yes, sir.

Q. Did they pay into it each week? A. I do not know if they paid into it each week. I couldn't say this, because for myself I have done it monthly, sometimes every two months, sometimes weekly.

Q. Yes, sir. The one exception that you mentioned was a fellow by the name of Dittman? A. No, sir. Gus Heideman.

Q. Gus Heideman. You say Gus Heideman did not pay? [1,236] A. This goes back, yes, sir, quite a ways back to when I was an apprentice and worked with him.

Q. And he was an apprentice? A. No, sir. I was.

Q. You were an apprentice? A. Working for him.

Q. You didn't pay when you were an apprentice? A. No, sir.

Q. Well, are apprentices exempt from paying assessments, dues? A. They pay Union dues; yes, sir.

Q. What about assessments? A. Right now, with the apprentices I have got, I have never looked to see if the three and three-quarters comes out of their checks.

Q. Do you have an apprentice out there now? A. We have one in the shop; yes, sir.

Q. What is his name? A. Kenneth Ross.

Q. Kenneth Ross? A. Yes, sir.

Q. Now, as an apprentice, do you collect money from him each week into this Fund? A. No, sir, I don't.

[1,237] Q. Does anybody? A. I do not know.

Q. Well, aren't apprentices exempt from paying into the Voluntary Fund? A. This, I don't know.

Q. I see. You say that you ride around to various jobs? A. Yes, sir.

Q. And you take out the Voluntary cards and distribute them around the jobs? A. If they are going to hire, I try to see that the foreman has these cards, his employment cards, state, federal, and I usually put these with it.

Q. You take the state and federal forms? A. Yes, sir.

Q. That new employees have to sign, and Volunteer cards right along with them? A. Yes, sir.

Q. And drive around, and just drop them all off at the same time? A. Well, no, sir. I go around to see them, to supervise their installation, and if I know we need men, or are hiring men, I will make sure they have them on the jobsite.

Q. Then the foremen on the jobsites make the actual collections? [1,238] A. Yes, sir.

Q. Then they turn them over to you? A. Yes, sir.

Q. And you take them in to the Union hall? A. To the Voluntary Fund.

Q. Yes, sir. Sir, are the foremen, in most instances, also stewards of the Union? A. No, sir.

Q. They aren't? A. Everyone, to me, like I say, is a steward, but classing as job stewards, no, they are not. They are the foremen of the job.

Q. If there is a steward on the job, and foremen on the job, who do you leave these forms with? A. I have it in an envelope, and I leave it completely with the foremen.

Mr. Riddle: I have nothing further.

Mr. London: Nothing further, Your Honor.

The Court: Step down.

(Witness excused.)

HOMER KISSEL,

being first duly sworn, testified in behalf of the defendants as follows:

[1,239] **Direct Examination.**

By Mr. Daly:

Q. What is your name, please? A. Homer Kissel.

Q. And where do you reside, Mr. Kissel? A. 10233 Marble Arch Lane.

Q. Where is that, sir? A. Affton, Missouri.

Q. Buying that property out there? Do you own that, or are you renting that? A. No, I am renting.

Q. I see. Are you employed at the present time, Mr. Kissel? A. Yes, I am.

Q. And by whom are you employed? A. Sodemann Heating Company.

Q. For how long have you been with Sodemann? A. Two months.

Q. For whom did you work prior to the time you were with Sodemann? A. Natkin's.

Q. Natkin? A. Yes.

Q. What is their business? [1,240] A. Piping contractor.

Q. Are you presently a member of Local 562? A. Yes, I am.

Q. And how long have you been a member of 562? A. Since July—I mean January 1st, '66.

Q. That would be almost two years you have been a member? A. Yes, sir.

Q. A year and nine or ten months?

The Court: This is September.

Mr. Randall: '66.

The Court: July '66.

Mr. Randall: I am sorry. Have you been a member—

A. No. I said January, '66.

The Court: OK. Then it is even more.

Q. (By Mr. Randall) About a year and nine months? Two years and nine months? A. Two years and nine months.

Q. All right. Now, are you familiar with the Voluntary Fund? A. Yes, I am.

Q. And do you contribute to the Voluntary Fund at this time? A. Yes, I do.

[1,241] Q. And are you a foreman, or steward, or journeyman? What is your designation? A. I am a journeyman.

Q. Not a foreman? A. No.

Q. Are you a steward on the job? A. No.

Q. Did you work as a pipefitter prior to the time that you became a member of 562? A. Yes.

Q. You were then working under—the designation would be out-of-towner; is that correct? A. That isn't what I would call it.

Q. What would you call it? A. I would call it the permit man.

Q. What local did you belong to at that time? A. Boilermakers Local 27.

Q. You were working as a pipefitter under 562 jurisdiction? A. That's right.

Q. Did you contribute to the Voluntary Fund at the time that you were working as a permit man, as you call it? A. That's right.

Q. Were the contributions you were making at that time [1,242] voluntary, Mr. Kissel? A. Yes, they were.

Q. And you are now contributing as a member of 562? A. That's right.

Q. Are the contributions you are making at this time voluntary? A. They are.

Q. How long were you a member of the Boilermakers? A. Twenty-two years.

Q. Did you ever have any office in the Boilermakers union? A. Yes, I did.

Q. What office did you hold, sir, in the Boilermakers union? A. I was the business manager.

Q. Now, let me ask you this: During the time that you were business manager of the Boilermakers, or even before that, did the Boilermakers have a voluntary fund? A. Yes.

Mr. Riddle: I am going to object to that as being completely immaterial, aside from any issue here.

The Court: Come up.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

[1,243] The Court: Why is it immaterial?

Mr. Riddle: As I understand it, they are talking about the—he is asking about a voluntary fund at another local.

The Court: Yes.

Mr. Riddle: And first off, whether another local has a fund is completely irrelevant to any issue here. Of course, in order to make the parallel, it would require a thorough development as to whether it was or wasn't voluntary, and to have counsel characterize it as voluntary, say——

The Court: Of course, whether it is voluntary or not is not the essence of this case anyway, is it?

Mr. Riddle: It is really not the essence; no.

The Court: I don't see where—and you are going to open up an unlimited cross-examination.

Mr. Daly: All right. You are sustaining the objection?

The Court: Well, I will sustain it when you go back. I will sustain it in front of the jury.

(Thereupon the trial was resumed before the jury as follows:)

The Court: Sustained.

Q. (By Mr. Daly) As I understand your testimony, Mr. Kissel, you were actually the business manager at one time [1,244] of 127, the Boilermakers; is that right? A. That is true.

Q. Following that, you worked as a permit man with Local 562? A. That's right.

Q. During this time, you contributed to the Fund that they have; is that correct? A. That's correct.

Q. You since have become a member, and you are now contributing as a member? A. That's right.

Q. Are these contributions on your part voluntary? A. Yes, they are.

Q. Are you related to any of the defendant's, Mr. Callanan, Lawler, or Seaton? A. No.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do I understand your testimony to be that you worked on 562 jobs before you became a member of that Local? A. That's right.

Q. Over what period of time did you work on 562 jobs prior to becoming a member? [1,245] A. Approximately two years.

Q. That would be the years of '64 and '65? A. That's right.

Q. During the year '64, do you recall what you were paying into that Fund? A. The amount?

Q. Yes. A. I believe I contributed $5.00 a week.

Q. $5.00 a week? A. My contributions, I believe; $5.00 a week.

Q. Before you joined 562? A. Yes. This is what I contributed.

Q. You don't recall it being $10.00 a week? A. Not what I contributed was not $10.00 a week.

Q. You never contributed $10.00 a week into this Fund? A. I contributed $5.00 a week.

Q. Throughout the period of time that you worked on any 562 job? A. There was a period of approximately six weeks when I didn't contribute.

Q. About when did you not contribute? A. That's right.

Q. When was this? A. Well, I went to the hospital, and after I got out, [1,246] I lost work and I couldn't afford it. I didn't feel like I could make the contribution.

Q. Did you make an explanation of that to someone? A. No.

Q. Tell your foreman why you couldn't contribute at that time? A. No.

Q. You didn't? A. No.

Q. Sir, did you contribute throughout 19 and 66, and particularly throughout the period of the Callanan Gift Fund?

Mr. Daly: May we renew our objection to this, Your Honor? Ask that be stricken, jury instructed to disregard it, and a mistrial be declared.

The Court: Be denied in all respects.

Q. (By Mr. Daly) Did you contribute to the Callanan Gift Fund? A. Yes, I did.

Q. How much did you contribute to that? A. $2.50 a week.

Q. $2.50 a week? A. Yes.

Q. How come—well, strike that. Did you attend any meeting when that Gift Fund, Callanan Gift Fund was discussed? [1,247] A. I was at the meeting.

Mr. Daly: Your Honor, may I object to this entire questioning, rather than to rise each time and object to each question?

The Court: All right. In relation to this line of interrogation about the Gift Fund.

Q. (By Mr. Riddle) How long did you pay in to that Fund? A. I believe it was approximately two months; somewhere in there.

Mr. Riddle: I have nothing further from this witness.

The Court: Anything else?

Mr. Daly: I have no redirect, Your Honor.

The Court: All right. Step down.

(Witness excused.)

The Court: We might as well have our afternoon recess at this point.

Members of the Jury, bear in mind the admonition I have given you heretofore.

(Following a brief recess, the further following proceedings were had before the jury:)

THOMAS COX,

being first duly sworn, testified in behalf of the defendants as follows:

[1,248] **Direct Examination.**

By Mr. Randall:

Q. Would you state your full name, please, sir? A. Earl Thomas Cox.

Q. Where do you live, sir? A. 1053 Coalbank Road.

Q. What city? A. Spanish Lake.

Q. Are you a member of Pipefitters Local 562? A. I am not.

Q. Have you ever worked under the jurisdiction of Pipefitters Local 562? A. Yes.

Q. And how long have you worked under their jurisdiction? A. About a year and a half.

Q. Where have you worked? A. At Hussmann Distributing Company.

Q. Are you a member of any union? A. No.

Q. Now, while you have been working under the jurisdiction of Pipefitters Local 562, have you contributed to the Pipefitters Voluntary Fund? A. I have.

Q. Have you always contributed to it? [1,249] A. No, sir.

Q. Would you tell us how you have made your contribution, and during what period of time, sir? A. Period of time, I don't think that I could state accurately. As far as how, sometimes I sent it to the hall. Sometimes I gave it to the steward at the job. Just different instances when I was there and I felt that—I figured that I had the extra money and the contribution is a great thing, so I gave it to a steward, and in turn he would take it to the hall. But I never give it to any person other than a shop steward or someone at the hall.

Q. Well, what percentage of the time that you have been working have you contributed, sir? A. Oh, percentage, I don't know, really. Sometimes I will give twice a month. Sometimes I'll give every week during the month. Other times I will just maybe not give it that month at all. It depends on how much money that I have left over, what bills and other obligations that I have.

Q. I see. And have those contributions been voluntary? A. Yes, sir, they have.

Q. Did anyone ever speak to you about whether or not you could not work if you do not contribute? A. No, sir.

Q. And are you still working, sir? [1,250] A. Yes, sir.

Q. And what political party do you belong to? A. I'm a Democrat.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, it wasn't clear to me just what your position is. Are you, at the present time, a member of 562? A. No, sir.

Q. I see. A. I am working in 562's jurisdiction as a service man.

Q. You are working in 562's jurisdiction? A. Yes, sir.

Q. As a service man? A. Yes, sir; refrigeration service man.

Q. And you have been working in that fashion for how long? A. A year and a half at the Hussmann Distributing Company.

Q. Sir, you say you make a contribution ever so often to the Union steward? A. This is one person that sometimes I give this contribution to, to turn it in to the hall for us, because we can't be going down every time that

we want to contribute, so he has been delegated to take the money to the hall, and this [1,251] is why I give it to the shop steward.

Q. How many people work there with you? A. At this shop? I'd say between twelve and twenty.

Q. Are they all members of 562? A. I don't know, sir.

Q. Do they all pay into the Fund? A. I don't know that either, sir.

Q. Are you the only non-union member working there? A. To my knowledge, I am. I don't know anyone else. I don't know if they are belonging to a union or not. I don't ask them, and they don't tell me, so I really don't know.

Q. Who first told you about the Fund? A. I don't remember who first told me. I was informed of it shortly after I went to Hussmann Distributing Company, that if I wanted to I could pay into this Fund, and——

Q. How long had you been working when you were told that? A. Two or three weeks, I'd say.

Q. Are you an applicant for membership in Local 562? A. I've never made out an application for membership, if that is what you mean.

Q. Yes. Are you planning to become a member of 562? A. In the future, if they feel that they need me in the Local as a refrigeration man, yes, sir, I will join this Local.

Q. When do you expect this to happen? [1,252] A. I don't know.

Q. Will you go in any time they invite you? A. Yes, sir, I would.

Q. Do they know you will come in any time they will invite you? A. I don't know. This is something I'd have to guess. I would say they will probably accept me; yes, sir.

Q. You say you have no written application pending? A. No, sir.

Q. Do you have an oral application pending? A. Well,——

Q. For membership? A. No, sir; not an application; no. If you are working at the trade, and they need members in the Local, then if you know your business, then you are going to be taken into the Local, but they are not going to take somebody that doesn't know their business. They have to have people that know their trade, so if you know your trade, then you would be accepted.

Q. What is keeping you from going in right now? A. I don't think I have enough experience.

Q. Are you an apprentice? A. No, sir, I am not. I took a course at Rankin Trade School in 1958 for refrigeration. I went in the service, [1,253] had refrigeration and copper work in the service. After I got out of service, I had various different jobs, different states. Then when I went with the engineers, I worked as a refrigeration man. I left there. I called 562's hall and asked if they needed any men for refrigeration or air conditioning work. They said they did. They put me to work at Hussmann Distributing Company, and I've been there ever since.

Q. The Union put you to work out there? A. Yes, sir. Yes, sir.

Q. All right. I see. Who in the Union hall sent you out there? A. I don't remember who it was. You go to the hall, and you go up to the window, and who is there at the time dispatches you, but I couldn't remember who it was.

Q. Anything said to you about this Fund down at the hall when you were trying to get sent out on a job? A. No, sir.

Q. And you were out there about two weeks or so before—— A. Two or three weeks. I don't know for sure now, but I would say it was around then.

Q. Did you sign a card telling them how much you would contribute? A. No, sir.

[1,254] Q. What do you base your contributions on? The number of hours you work? A. No, sir. I base it on whatever money I have left, five, ten dollars this week that I think I can spare.

The Court: Just a minute. Just a minute.

(There was a short interruption.)

The Witness: Five, ten dollars a week that I feel that I can afford to contribute to this, this is what I'll give. Other weeks I may give five. Then there have been weeks that I have contributed twenty. It is just whatever I have left over.

Q. Sir, have you been told what this money is being used for? A. I have been told that this money is used to back political persons that are labor people. In other words, they advocate labor, and I think that if this is a fund that will back a labor party, because this is a labor organization, there should be more of them.

Q. Sir, have you attended any meetings down at the hall? A. No, sir, I haven't.

Q. Have you been invited to attend any of the meetings? A. No, sir.

Q. Have you ever heard of a Political Fund meeting? A. No, sir.

[1,255] Q. Do you understand that there is an accounting of these monies? A. Yes, sir.

Q. Who told you that all the monies paid in are accounted for? A. I don't remember who it was, but if

you pay money into something, there is always an accounting of it.

Q. Almost. A. No, sir. All the time.

Mr. Riddle: Nothing further.

Mr. Randall: I have one further question.

The Court: All right.

Redirect Examination.

By Mr. Randall:

Q. Sir, are you working as a journeyman pipefitter at this job that you are now holding? A. Yes, sir.

Mr. Randall: That's all.

The Court: All right. Step down. Call your next witness.

(Witness excused.)

CECIL DEWEESE,

being first duly sworn, testified in behalf of the defendants as follows:

[1,256] **Direct Examination.**

By Mr. Daly:

Q. Would you state your name, please? A. Cecil Deweese.

Q. Where do you reside, Mr. Deweese? A. 803 Allegheny, Lemay, Missouri.

Q. Where is that? A. 803 Allegheny.

Q. Where is 803 Allegheny? A. Lemay, Missouri.

Q. Now, are you employed at this time, sir? A. Yes, sir.

Q. And for whom are you employed? A. Kramer-Hicks.

Q. And how long have you worked for Kramer-Hicks? A. About six months.

Q. And where were you employed, or for whom were you employed prior to this? A. Kaiser Engineers from California.

Q. And are you a member of Local 562, Mr. Deweese? A. Yes, sir.

Q. How long have you been a member of Local 562? A. Thirty years.

Q. Now, are you familiar with the Voluntary Fund? [1,257] A. Yes, sir.

Q. And do you contribute, sir, to the Voluntary Fund? A. Yes, sir.

Q. And is that contribution that you make voluntary? A. Yes, sir.

Q. Now, sir, have you ever been to any of the Voluntary Fund meetings, or political meetings that are held? A. Yes, sir.

Mr. Riddle: I will object to the form of that question, Your Honor. It is a double question, saying fund or political meetings; entirely two different things.

The Court: All right. Ask him one or the other.

Q. (By Mr. Daly) Have you ever been to the Fund meeting? A. Yes, sir.

Q. Do you recall where those meetings were held, Mr. Deweese? A. One was held at the Chase, and one was held at the Electricians Hall.

Q. And were some candidates there at the time, at either of the meetings, that you recall? A. I think there were some candidates at the Electricians Hall.

Q. I see. Now, do you recall any of the candidates that were there? [1,258] A. No, sir, I don't.

Q. Now, do you know which candidates the Fund backs in the election? A. What years now?

Q. Well, any particular year? Could you tell us? A. Well, we backed Senator Long, and Senator Symington at one time.

Q. Do you recall any presidential candidates that the Fund backed? A. President Johnson.

Q. Have you ever worked as a steward collecting any money for the Fund? A. I have worked as a steward.

Q. Have you ever made collections for the Fund? A. I have received contributions.

Q. When you received these contributions, did you ever tell any of the men that were working under you, or who were making the contribution, that they had to make the contribution? A. No, sir.

Mr. Riddle: Object to leading.

The Court: Don't lead the witness.

Mr. Riddle: Ask the jury to disregard that answer.

The Court: The jury will disregard the answer.

Mr. Daly: You can have the witness.

[1,259] Mr. Riddle: I have nothing to ask this witness.

The Court: All right. Step down. Call your next witness.

(Witness excused.)

JAMES O'MARA,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, please. A. James O'Mara.

Q. Where do you live, Mr. O'Mara? A. In Florissant.

Q. What is your address out there? A. 2245 Oxford Drive.

Q. Are you married, sir? A. Yes.

Q. Family? A. Yes.

Q. Do you own your property out there, or buying it? A. I am buying it.

Q. Are you a member of Pipefitters Local 562, Mr. O'Mara? A. Yes.

Q. Where are you employed now? [1,260] A. Labadie Powerhouse, for Bechtold.

Q. How long have you been a member of the Union? A. About thirteen years.

Q. What is your position now? Are you a foreman, steward, journeyman, or just what position do you occupy? A. They call it an area foreman.

Q. And how long have you held that position? A. About a month.

Q. In your position, Mr. O'Mara, are you familiar with the Voluntary Fund? A. Yes.

Q. And do you make some collections for the Fund? A. No, not right now.

Q. Have you, in the past? A. Yes.

Q. Are you familiar with the Voluntary Fund cards? A. Yes.

Q. Have you had occasion in the past to give any of these cards to any of the men that work under you? A. Yes.

Q. Would you tell the Court what you tell these men at the time you give them these cards? A. I just tell them if they want to sign them, they can.

Q. Anything further than that? [1,261] A. No.

Q. Let me ask you, Mr. O'Mara, if you have occasion to attend any meetings of the Voluntary Fund? A. Yes.

Q. And where were these meetings held, sir? A. I think at the Teamsters hall. I think we had one at the—there is a hall behind the Teamsters. I think it is across from the Plumbers hall.

Q. Electricians hall? A. Yes.

Q. Do you know what transpired at these Voluntary Fund meetings A. What do you mean by that?

Q. Any candidates appear, or anything of that nature? A. I think we have had candidates introduce themselves at different meetings.

Q. Do you remember the names of any of the candidates that appeared at any of the Voluntary Fund meetings? A. The only one I can remember now was Governor Hearnes, before he was Governor.

Q. Are you familiar with the term of the Voluntary Fund? Do you sometimes call it a Political Fund, or is it always referred to as Voluntary Fund? A. Voluntary, I guess.

[1,262] Q. Do you recall a—are you familiar with a term, "Screening Committee"? A. Yes.

Q. What was the Screening Committee, sir? A. Well, it was set up to screen these different candidates, to see which ones we wanted to donate to.

Q. And did the Screening Committee report to the membership of the Voluntary Fund meetings? A. At least once, that I know of.

Q. Do you remember when that was, sir? A. No. No, sir.

Q. How was the Screening Committee selected, if you remember? A. No, I can't honestly say.

Q. Do you remember who was chairman of that Screening Committee? A. The only name that comes to my mind is Jim Hickey.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. You have been an area foreman how long? A. On this job, one month.

Q. What are you making an hour now? A. Let's see. I guess it's $6.73.

[1,263] Q. $6.73? What does a regular foreman make? A. A quarter less.

Q. That would be forty—— A. ——eight.

Q. Forty-eight. And a journeyman? A. $5.98.

Q. You make about seventy-five cents more per hour? A. Exactly.

Q. Than a journeyman does? A. Right.

Q. That is $3.20 more per day? A. I'd have to assume that.

Q. What are you paying into the Fund now per 8-hour day, or 40-hour week? A. Fifty cents a day.

Q. A journeyman who makes $3.20 less than you, he pays the same amount you do? A. Right.

Q. To the Voluntary Fund? A. Yes.

Q. Was that decided upon that—— A. It was set up at the meeting.

Q. Meeting? A. (Indicating yes.)

[1,264] Q. Which meeting? A. I couldn't tell you which one.

Q. Were you there? A. Yes, sir.

Q. Who recommended you to be area foreman? A. When I got there, Bud Foley told me I'd be area foreman. He is my superintendent.

Q. Foley is the superintendent? A. Right.

Q. He is a member of 562? A. Yes, sir.

Q. He is superior to you in the Union hierarchy? A. What do you mean by that?

Q. Well, he's between you and the Union hall, I take it? A. He's my boss; right.

Q. Sir, were you at the meeting in January of 1966 when your voluntary payments were reduced? A. Yes. I can't verify the date, but I've made them all. That is the only reason I can say I was there.

Q. Do you remember when they were reduced? A. I don't remember the particulars.

Q. Do you remember they were reduced from what figure to what figure? A. They went one time from a dollar a day, I think, to—[1,265] I don't know. I'm not sure.

Q. Do you remember that the assessments were raised the same day that your payments in this Fund were decreased? A. I couldn't honestly say this was all the same meeting or not. It's been so long.

Q. You don't remember that? A. (Indicating no.)

Q. Have you heard these payments into the Fund referred to as assessments? A. I can't truthfully say one way or the other. My dad has called them assessments for as long as I have known.

Q. Who? A. My dad.

Q. The payments into the Fund, he calls them assessments? A. We used the term assessments for years. He's a pipefitter too.

Q. Yes, sir. But you—now you don't call them assessments? A. No. I call them the Voluntary Fund.

Q. But your dad calls them assessments? A. I can't say that he does. I mean I have heard the term assessment, if that is what you mean.

Q. Well, you just testified that your dad always refers to them as assessments? [1,266] A. I didn't say the Voluntary Fund. I said he refers to assessments, the term.

Q. Does he refer to payments into this Voluntary Fund? A. Oh, I can't say that.

Q. You are not saying that? A. No.

Q. Did anybody tell you to be careful not to use the word assessments in here when you are in the courtroom today? A. You mean like——

Q. The use of assessments to describe the payments into this Fund? A. Well, in the newspaper it seems like they are just making a big issue out of assessments. That is all.

Mr. Daly: Your Honor, may I ask that be stricken and the jury instructed to disregard it, and a mistrial be declared?

The Court: No. The answer was not responsive to the question, for one thing. The jury will disregard it.

Mr. Riddle: I don't have anything else to ask this witness.

The Court: All right.

Redirect Examination.

By Mr London:

Q. Mr. O'Mara, you say your father is a fitter also? [1,267] A. Yes, sir.

Q. In years gone by, these older pipefitters refer to everything they pay as assessments? A. Right.

Q. Even today some of them still refer to this Voluntary Fund as assessments? A. That's right.

Q. In days gone by, everything was collected at one time, and they said whatever they paid was assessments; is that the way they referred to it? A. That's right. I don't think you can change terminology over night.

Q. Regardless of what you call it; the payments into the Voluntary Fund, is it an assessment, the fact that your father called it that? A. No.

Q. That doesn't make it an assessment, does it? A. No.

Mr London: OK.

Recross-Examination.

By Mr. Riddle:

Q. What do you understand an assessment to be? A. This is something set up by the Union.

Q. All right, sir. Are you telling this jury that the [1,268] amount that you pay in here today is not set up by the Union? A. For what?

Q. The amount that you pay into this Voluntary Fund per day is not set up by the Union? Are you telling this jury that? A. This isn't a Union organization.

Q. Is 562 a union? A. Yes.

Q. Is it headed by Mr. Ed Steska? A. President; yes.

Q. Yes. And Mr. Lawrence Callanan is one of the officials of that union? A Right.

Q. And Mr. John Lawler? A. Right.

Q. And Mr. George Seaton? A. Right.

Q. And all the meetings that you have are chaired by either Mr. Steska, Mr. Callanan, Mr. Lawler or Mr. Seaton? A. That's right.

Q. And all of the people who attend these meetings that you refer to as the Fund meeting are members of Local 562? A. To my knowledge.

Q. Yes, sir. And those meetings are held at the Union hall, or at another hall, usually, and frequently used for a [1,269] meeting place by the Union, aren't they? A Yes, they are the same.

Q. Yes, sir. And the payments are made to the Union hall, are they not? Your cash payments that you pay in each week? A. They have offices in the same building yes, sir.

Q. And the offices there are the offices that are occupied by the officers and the other officials of the Union? A. What was that again?

Q. And I say in those buildings—these offices are occupied by the Union, and all of its staff? A. Yes, they are all in one building.

Q. Yes, sir. A. Yes, sir. I am sorry.

Q. Sir, I ask you now to look at Government's exhibit, the one on the left, and notice the rate of payment into the Voluntary Fund from January 1, 1963, to January 1, 1966, and ask you if that doesn't represent a consistent payment of $1.00 for each 8 hours worked each day? A. Through '66; yes.

Q. Yes, sir. And from January 1 of '66, payments were reduced 50 cents? A. Yes.

Q. Down to 50 cents for an 8-hour day? A. Right.

[1,270] Q. And at the same time, your assessments that you pay into the Union were increased to $1.50 a day from January 1, 1966? A. Yes.

Q. The assessments that you pay in are based upon your gross wages or salary, aren't they? A. Yes, sir.

Q. And what are the payments into the Voluntary Fund based upon? A. On an 8-hour day.

Q. On an 8-hour day. Now, sir, you tell this Court and jury the difference between those assessments and those assessments. A. Well, this is voluntary.

Q. Yes, sir. It is voluntary. But tell the Court and jury the difference between those assessments and these. Forget the word voluntary. Use your own words, and tell them. A. I don't see what you mean.

Q. Sir, do you see a similarity between the payments under this program and the payments under this program? A. I must be stupid, but no.

Q. You don't see the similarity. I have nothing else to ask him.

[1,271] Mr. Randall: I have a few questions.

The Court: All right.

Redirect Examination.

By Mr. Randall:

Q. Sir, the dues and assessments, to whom are they paid? A. To John Burke.

Q. To whom are the dues and assessments paid? What organization? A. To Local 562.

Q. And the Voluntary contributions are paid to what organization? A. To the Voluntary. I guess Political Fund.

Q. Fund. Now, sir, I'll ask you this question: Were or were not separate meetings held for the Local and for the Fund? A. Sure; yes, sir.

Q. Which was it? Separate or not separate? A. They were separate.

Q. And the determination as to how much to pay for dues and assessments were made at a meeting of, was it the Local, or was it the Fund that determinations were made as to what dues and assessments were to be paid? A. Dues and assessments are always handled at a Union meeting.

[1,272] Q. At a Union meeting. And determination as to how much contributions were to be made into the Fund, what meeting was that determination made at? A. At the Voluntary Fund.

Mr. Randall: That's all.

The Court: Anything else, Mr. Riddle?

Recross-Examination.

By Mr. Riddle:

Q. Was this meeting held all at the same night? These two meetings that you are referring to? A. I can't honestly say that. You mean the particular one where it was changed.

Q. Yes. A. I don't remember if that was a Sunday meeting or—We have had some——

Q. Sir, you testified that these were distinct and separate meetings? A. We have held separate meetings on the same night; yes.

Q. In the same place? In the same room? A. Right.

Q. Under the same roof? A. Right.

Q. How could you tell when you were going from one meeting into the next? [1,273] A. Well, you adjourned one and you start another one.

Q. Is that the only thing that changed? All of the people were the same? A. I would imagine.

Mr. Riddle: Yes. OK. That's all.

The Court: Anything else? Step down.

(Witness excused.)

HERBERT KRAHMAN,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination

By Mr. Randall:

Q. Mr. Krahman, would you state your full name, please? A. Herbert Phillip Krahman.

Q. Where do you live? A. 10539 St. Henry Lane, St. Ann.

Q. Mr. Krahman, are you a member of Pipefitters Local 562? A. Yes, sir.

Q. And how long have you been a member? A. I became a member of Local 562 in September, 1937.

Q. Now, Mr. Krahman, are you familiar with the Voluntary Political Fund? A. Yes, sir.

[1,274] The Court: Mr. Krahman, would you get about four or five inches further from that microphone, please?

The Witness: All right.

Q. (By Mr. Randall) Have you ever attended any meetings of the Political Fund? A. Yes, sir.

Q. Do you also attend meetings of the Local? A. Yes, sir.

Q. Do you attend most of the meetings? A. I attend as many as I can possibly attend.

Q. Now, sir, were you present at a meeting of the Fund when a determination was made to change the amount of contributions of the people who were contributing to the Fund? A. If I recall correctly, we were contributing, I think, a dollar a day, and it was voted to drop down to fifty cents a day, if my memory serves me correctly.

Q. All right, sir. Now, did you attend a meeting of the Local around or near the same period of time, at which time the assessments were changed, of the Union itself? A. Yes, sir. The assessments were changed, raised up to three and three-quarters per cent of our gross earnings.

Q. Were those different meetings? The two meetings we have just spoken about? A. I'm almost sure that they were two separate meetings. [1,275] They might have been the same date, but they were—In other words, the Union meeting was the Union meeting, and the Political Fund was the Political Fund, if my memory serves me correctly.

Q. All right, sir. Now, Mr. Krahman, in addition to being a pipefitter, do you hold an elective position in St. Ann's? A. I did. I held an elective position from April, 1958, up until April of 1968, when I retired from the Board of Aldermen.

Q. You were a member of the Board of Aldermen? A. Yes, sir.

Q. Now, sir, did you sign one of the Contribution Agreements to the Fund? A. Yes, sir.

Q. And did you read the agreement at the time? A. Yes, sir.

Q. Did you understand it? A. I think so.

Q. Now, Mr. Krahman, I will hand you what's been marked Defendants' Exhibit A, and I will ask you if that is the type of card that you signed? A. I would say this is the original card.

Q. It is not the one that has your signature on it, but [1,276] that is the kind you signed? A. That is the original one for a dollar.

Q. And, sir, would you read the last paragraph of the card? A. (Reading) "I understand that contributions are voluntary on my part, and that I may revoke this agreement by a written notice to the effect mailed to the Fund or to persons in charge thereof.

"I also understand that my contributions are no part of the dues or financial obligations of local Union No. 562, and that the Union has nothing whatsoever to do with the Fund."

Q. Thank you. And you understood then at that time that the Union had nothing to do with the Fund? A. That's correct.

Q. Now, Mr. Krahman, did you ever collect for the Fund? Collect contributions for the Fund? A. Yes, sir. I collected five or possibly six weeks when I was assigned

to a very small job in north St. Louis. I was asked to be general foreman and steward. I had five men and myself on the job.

Q. Now, what procedure did you use in making those collections, sir? A. All the men on the job with me were 562 men, with the exception of one student. On Monday morning, I usually went [1,277] in the trailer about five or ten minutes to 8:00. Pardon me. Occasionally we might get an hour or two a night overtime. So on Monday I would tabulate how many hours we put in, and if my contributions, for example, was for forty hours, I laid down $2.50 on my desk. As the men came in, they saw the amount that I laid down in contribution. In fact, I think most of the time their conversation kept right on going. If they had a five dollar bill, they took whatever change was there. If we worked overtime, I added that. In other words, for every four hours overtime, I added fifty cents a day contribution to the Political Fund.

Q. And they left theirs on the table? A. Right.

Q. Now, sir, at these Fund meetings that you attended, were there ever any candidates present? A. I think at one time there were some candidates, but I wouldn't say yes, and I wouldn't say no, because I couldn't say positively.

Q. Were there any—Can you recall discussions of candidates, or speeches? A. I think that many times the qualification of various candidates was discussed.

Q. Were you present at a meeting of the Fund two or three months ago where a vote was taken? [1,278] A. Yes, sir.

Q. And did you remain for the count of that vote? A. No. I turned in my ballot, and I asked the next day, I think, on the job, if I remember rightly, and it was overwhelmingly in favor of the Fund.

Q. And, sir, did the people who attended that Fund meeting, did they fill out an attendance card? A. Yes, sir; white card.

Q. Then how was the vote taken after that? A. I think you voted either you were for or against the Political Fund.

Q. Did you have a ballot? A. They had a box, and they put the ballots in.

Q. All right. Now, sir, did anyone ever say to you, or state to you, anything as to whether or not it was necessary to contribute to this Fund? A. No, sir.

Q. Did you ever state any such thing to anyone else? A No, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, when the Union's assessments were raised to three and three-quarters—do you remember that? [1,279] A. Yes.

Q. Were you at that meeting? A. Yes, sir.

Q. Was that raised by a vote? A. I think it was a recommendation of the Executive Board, and the minutes of the Executive Board were approved.

Q. By a vote? A. By a vote.

Q. Of the membership? A. Right. I mean that is, to the best of my recollection.

Q. So the assessment was raised by action of the entire membership? A I think it was, with the recommendation—in other words, it came out in the minutes, if my memory is correct, and the minutes of the Executive Board are read to the members, and then, what would you call, the business meeting records were approved by the membership.

Q. In other words, their action was ratified? A. Right.

Q. In the case of your increase to three and three-quarters, the Executive Board recommended to the membership that they be raised that much up to three and three-quarters per cent of the gross? A. To the best of my knowledge, I say that is to the [1,280] best of my knowledge. I don't remember every detail on it.

Q. Well, this was voted upon by the membership, wasn't it? A. Yes, sir, to my knowledge.

Q. And the decrease in the payments into the Fund was voted on by the membership? A. Yes, sir.

Q. That was decreased the same way that the assessments were increased? By the same body of people? A. Yeah, I think so.

Q. Yes, sir. Do you recall who presided at this meeting where the assessment was raised and the Fund payments were decreased? A. I don't remember, the business manager, or the assistant business manager, or the president, but I am pretty sure it would be one of the three. Now, which one it was, I couldn't answer.

Q. Well, did the same person preside over both meetings? A. It's possible.

Q. The president is Mr. Steska? A. Correct.

Q. You said he was one of them that could have, or you said that possibly two others may have. Who were the others, by name? A. Mr. Lawrence Callanan and Mr. John "Doc" Lawler.

[1,281] Q. Right. Now, it is your testimony to the jury that one of those three men presided at both meetings? A. To my knowledge, or to the best of my knowledge.

Q. Can the same man preside at both meetings? A. That, again, I wouldn't say for sure.

Q. Sir, do you recall signing another card called a Gift Fund? A. Yes, sir.

Mr. Daly: Your Honor, I am going to make an objection to this, and also request——

The Court: Let the record show that he objected, and it was overruled.

Q. (By Mr. Riddle) Where was that meeting, or where did you sign that card? A. It was voted on at the special meeting, and I think I signed that card a short time later on the job, if my memory is correct.

Q. You say this was voted on at a special meeting? And where was it held? A. It was discussed thoroughly at a special meeting yes, sir.

Q. Special meeting of the Union? A. Of the Fund.

Q. Oh, this is a Fund meeting? [1,282] A. To my knowledge, it was.

Q. Was there a notice sent out on it? A. All our special meetings have written notices.

Q. All right. Who presided at this meeting? A. If it is the meeting I recall, I think John "Doc" Lawler presided at that meeting.

Q. Did you understand that was a Fund meeting, or a Union meeting? It is kind of hard to tell them apart, isn't it? A. I distinctly remember two meetings on a Sunday, and you try to bring down, you know, to pinpoint in my own mind, say it is definitely this or that, I find it rather difficult. I am trying to be very frank and very honest about it.

Q. Yes, sir. Well, you think that Mr. Lawler presided at the Gift Fund meeting though? This is your recollection? A. I think so.

Q. Was that taken to a vote? A. Yes, sir.

Q. Do you know how much money was donated into this Gift Fund?

Mr. London: May we approach the bench a moment, Your Honor.

The Court: All right.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

[1,283] Mr. London: At this time, if the Court please, we would like to renew all of the objections that have heretofore been made to the testimony concerning the Callanan Gift Fund, and add that the amount of money donated would certainly be totally irrelevant and immaterial, and highly prejudicial to the defendants.

The Court: I don't see how the amount of money comes within the purview of the direct examination. Now, I can see how whether or not he contributed to the Gift Fund, whether he signed a card, but I don't think what the amount of money was that was contributed to the Gift Fund is material. If you want to tell me, I will listen.

Mr. Riddle: Well, I think it is interwoven with the proposition of whether or not there were separate meetings, or whether or not this was all the action and conduct of the Union.

The Court: Well, I can see how some of the questions that you have propounded in relation to the Gift Fund bear that out, but the amount—so I will sustain the objection.

Mr. London: We will ask further relief, that the question be stricken, the jury instructed to disregard it, and that a mistrial be declared.

The Court: Request for a mistrial will be denied.

(Thereupon the trial was resumed before the jury as follows:)

[1,284] The Court: The jury will disregard the last question.

Q. (By Mr. Riddle) Sir, in connection with the signing of this Gift Fund—

(Thereupon Government's Exhibit No. 215 was marked by the reporter for the purpose of identification.)

Q. —and I understand this is not your card—it should be a card like you signed—Can you tell by looking at it, and tell the Court and jury if that is the same card that you signed, or one just like that? A. Yes, sir.

Q. Did you read it? Did you read that card over before you signed it? A. Yes, sir.

Q. Did you understand what it said? A. Yes, sir.

Q. Would you read it over for the jury now, please, and the Court?

Mr. Daly: We object to this. I think this is way beyond the scope of the direct examination of this witness, and certainly does not tend to prove or disprove any of the issues involved as to the Voluntary Fund.

The Court: I think that it is beyond the scope of the direct examination. If you will tell me what the purpose of it is, I think—Has this card been read before?

[1,285] Mr. Riddle: It has not, as far as I can recall.

The Court: Well, it is in evidence, isn't it?

Mr. Riddle: It is in evidence, but our position, Your Honor, is that this witness was asked about the other card.

Mr. London: May we approach the bench?

Mr. Riddle: This witness was asked about the other card that he signed, asking if he understood it, and this is the similar type of card that he says he signed, and read the other one, and I am asking him, I submit, it is properly within the scope of the direct examination.

The Court: He was asked if he signed the other card and if he read it, but the point that I am making, Mr. Riddle, is that a card with the very same wording on it is in evidence, and the jury has seen it.

Mr. Riddle: All right. Well, then in view of that, we will withdraw that question.

I believe I have nothing further to inquire of this witness.

Mr. Randall: No questions.

The Court: Call your next witness.

(Witness excused.)

Mr. Riddle: If it please the Court, just a second.

(Mr. Riddle conferred with the clerk.)

[1,286] **JAMES J. RYAN,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, please. A. James J. Ryan.

Q. Where do you live, Mr. Ryan? 138 Vlasis Drive, Ballwin.

Q. Mr. Ryan, are you a member of Pipefitters Local 562? A. Yes, sir.

Q. How long have you been a member? A. Since February, 1942.

Q. Where are you working now, sir? A. For the Bechtold Corporation, at the Labadie Power Plant.

Q. Do you hold any position? Journeyman? Foreman? A. Foreman.

Q. Mr. Ryan, are you familiar with the Voluntary Fund? A. Yes, sir.

Q. Do you contribute to the Voluntary Fund? A. Yes, sir.

Q. Have you signed a card for the Voluntary Fund, sir? A. Yes, sir.

Q. Have you had occasion, sir, to hand out cards to any [1,287] new men on your jobs for the Voluntary Fund? A. Yes, sir.

Q. What do you tell the men when you give them a card, sir? A. Just give them the cards for the Voluntary Fund, and if they want to sign it, why they sign it, along with the withholding tax forms, or any other forms that we have to fill out, or that we do fill out, I should say.

Q. Have you ever attended any union meetings of Local 562? A. Yes, sir.

Q. Have you ever attended any Voluntary Fund meetings? A. Yes, sir.

Q. They are separate meetings, are they not, sir? A. Yes.

Q. Were you at a meeting some while ago, not too long ago, where a vote was taken whether or not to continue the Voluntary Fund? A. Yes, sir.

Q. Do you know what the outcome of the vote was, sir? A. It was to continue it.

Q. Do you know what the number, the number of ayes and the number of nays were? A. It was a written ballot.

Q. Do you know what the final count was? [1,288] A. I don't remember, but it was quite a majority in favor of continuing it.

Q. Was this a vote taken by secret ballot, sir? A. Yes, sir.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do I understand your practice, to be when a new job starts, or new people come on the job that is under your supervision, that one of the first things you do is take them the withholding forms? A. Yes, sir.

Q. And the vote card form? A. Well, that's—I have all these cards along with the papers to hire new employees.

Q. All right. Everything that is necessary for a new employee to sign, showing all of his withholdings and deductions, you take it on the job and make it available for them, or somebody underneath you, to get it signed? A. I have, on occasion, done this. I don't do this at Labadie. I mean——

Q. Who does it at Labadie? A. Well, they have a timekeeper who takes care of these withholding tax forms.

[1,289] Q. When a new man comes on the job, the first thing he sees from his union is the withholding tax form, this Voluntary Card form? A. No, sir.

Q. What is the first thing that he sees from his Union? A. Well, if you are talking about Labadie now, sir——

Q. Well, the one that you were talking about when you answered Mr.—— A. Well, I was with a company for several years where I was the foreman. It was a company who did smaller type jobs, and I was the foreman, and acted as the steward on these jobs, and when a man would come to work on the job, why we would have to sign him up, and find out who he was, what his deductions were, and if he was going to contribute to the Voluntary Fund, so on and so forth.

Q. Sir, how many people do you think that you have oriented in that fashion, just the way you have described it to the jury? That is, a new man coming on the job, and you, his foreman, the first days there, come out and give these various forms to fill out. How many men do

you think you have gone through that process with? A. Well, I was foreman of that company for nineteen years, and I was in a supervisory capacity all that time, and I couldn't even guess at how many people I have done it; quite a [1,290] few.

Q. Did any employee, under those circumstances, ever refuse to sign that card, along with the other cards that you gave out? A. No, sir.

Q. Not a single one? A. No, sir.

Q. Out of hundred and hundreds? A. I wouldn't say it was hundreds.

Q. Well, over a hundred? A. I'll say a couple hundred, maybe, over a period of years; yes.

Q. Anybody ever ask you any questions about what this card was for? A. I think they all realized what it was for, as well as I did.

Q. In fact, it is well known in the trade among pipefitters all over the country, isn't it, that you work on this job, on a job for 562, you pay this amount of money? A. Well, sir, I don't know what is known around the country. As far as what is paid, this Voluntary Fund is voluntary, and I mean if people don't pay it, if they don't want to they don't have to pay it.

Q. Do you remember when the word "voluntary" was hung [1,291] onto it? A. Not precisely; no, sir.

Q. It was about January 1 of 19 and 63, wasn't it? A. Probably so.

Q. Before that time, what were these payments called? A. I could be wrong about that. It seems like it was the Political Fund; something like that.

Q. Were they called assessments before that term "voluntary" came? A. No, sir.

Q. Never called assessments? A. Not to my knowledge.

Q. You never called them assessments? A. No, sir.

Mr. Riddle: I have nothing to ask this witness.

The Court: Anything else?

Mr. Randall: Nothing.

The Court: You may be excused.

(Witness excused.)

The Court: Have you got another short one?

Mr. Daly: Yes, sir.

WILLIAM DEISNER,

being first duly sworn, testified in behalf of the defendants as follows:

[1,292] **Direct Examination.**

By Mr. Daly:

Q. Would you state your name, please? A. William Deisner.

Q. Where do you reside, Mr. Deisner? A. 5617 Jennings Road.

Q. And where is that, sir? A. Jennings.

Q. And are you employed at this time? A. Yes, I am.

Q. And by whom are you employed? A. Bechtold Company.

Q. And where are you employed for them? A. Labadie, Misssouri.

Q. How long have you been with the Bechtold Company? A. Since July 15th.

Q. Of this year? A. Yes, sir.

Q. For whom were you employed prior to that? A. Doherty Company.

Q. Doherty Company? What business does the Doherty Company have? A. Pipe.

Q. And is the Bechtold Company also in the same business? [1,293] A. Yes, sir. General contractors, I believe they are more.

Q. What is your trade or occupation? A. Pipefitter.

Q. And are you a member of Local 562? A. I am.

Q. How long, Mr. Deisner, have you been a member of Local 562? A. Twenty years, roughly.

Q. Now, what is your job for Bechtold? A. Pipefitter foreman.

Q. Are you a member of the Voluntary Fund? A. Yes, I am.

Q. And do you make contributions to the Voluntary Fund? A. Yes, I do.

Q. And do you make these contributions, sir, voluntarily? A. Yes, sir.

Q. And, now, do you collect for the Fund at this time? A. Yes, sir.

Q. And how many men are working under you? A. Six.

Q. And are you collecting from those six men? A. I collect from them, and then give it to the job steward.

[1,294] Q. He takes them into the Fund hall? A. Yes, sir.

Q. Has anyone ever told you that you had to make these contributions? A. No, sir.

Q. Have you ever told any of the men working under you in the nineteen years, that they had to make contributions to this Fund? A. No, sir.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. What is your name, again? A. William Deisner.

Q. How do you spell the last name? A. D-e-i-s-n-e-r.

Q. Are many people working under you that don't make these contributions? A. No, sir.

Q. They all pay according to the scale? A. Yes, sir.

Q. And the scale now is what? A. For Pipefitter foremen, $6.48.

Q. I am talking about paying in the Fund. What is the [1,295] scale for that? A. Fifty cents per eight hours worked.

Q. Fifty cents per eight hours worked? A. Yes, sir.

Q. It used to be a dollar for eight hours worked? A. I believe it was; yes, sir.

Q. Do you have a single man now, or any time, whose contributions would be a penny more than the established or fixed contribution rate? A. Not that I know of; no, sir.

Q. Have you ever heard of anybody paying more than the fixed or established rate? A. No, sir. Well, do you mean out of town, the difference there, or what?

Q. Well, I am talking about, well, there is a rate established for out-of-towners too, isn't there? A. Yes, sir.

Q. What is that rate? A. I believe it figures out about twenty-five cents per hour.

Q. About twenty-five cents per hour? A. Worked; yes, sir.

Q. Who established that rate for out-of-towners? A. I guess the Voluntary Fund did. I don't know.

[1,296] Q. The out-of-towners didn't, did they? A. I don't guess so.

Q. How do these out-of-towners react to that rate of $2.00? A. I have never heard any complaints from them.

Q. Do you line them up when they come on the job, with the cards, and get them to sign them? Have you ever done that? A. No, sir.

Q. You have collected from them? A. Collected from them if they work for me and my gang; yes, sir.

Q. Do you go tell them that their rate is $2.00 a day? A. No. I imagine they are told that when they come on the job. I don't tell them that.

Q. In any event, they know what the rate is before you ever get to them? A. Yes.

Q. The only thing you have to do is say, "Just give me your payment"? A. Yes, sir.

Q. You say they voluntarily give it to you? A. They never have beefed to me about it.

Q. You wouldn't be the one that they'd beef to, I don't suppose? [1,297] A. Well, I don't know.

Q. Do you ever notice any of them going down and beefing to the hall? A. No, sir, I don't.

Mr. Riddle: OK. That's all.

The Court: Anything else?

Mr. Daly: No redirect, Your Honor.

The Court: You may be excused.

Gentlemen of the Jury, I am going to recess until 9:15 tomorrow morning. I have got a couple matters to attend to before we bring you in, so if you will get here at 9:15, I will try to bring you in at 9:15.

Bear in mind the admonition I have given you heretofore. You are not to read any newspapers, or look at television, or listen to the radio at times when news are on. You are not to talk to anybody about the case, or permit anyone to talk to you about it, form no conclusion

about the case until you have heard all of the evidence and the instructions of the Court and argument of counsel. 9:15 tomorrow morning.

(Thereupon at 4:50 p. m., on Thursday, September 12, 1968, court was adjourned until 9:15 a.m., Friday morning.)

[1,298] Friday, September 13, 1968.
Morning Session.

(Before court convened, the following proceedings were had out of the hearing of the jury:)

(Thereupon defendants' Motion Exhibits Nos. 13, 14 and 15 were marked by the reporter for the purpose of identification.)

Mr. London: If the Court please, yesterday morning before the commencement of proceedings, I indicated to the Court that I had some additional exhibits that I wanted to offer in line with our motion regarding publicity, and the Court said to do it at a later time, so, at this time, I would like to renew all of the motions that we have previously made with regard to publicity, and offer into evidence defendants' Motion Exhibits 13 and 14, being articles appearing in the St. Louis Globe-Democrat of Thursday, September 12th, 1968, and defendants' Motion Exhibit 15, being articles appearing in the St. Louis Globe-Democrat of Friday, September 13, 1968.

The Court: Was there more than one article in the Globe?

Mr. London: There are two articles in each edition, Your Honor, one relating to this trial, and one relating to the continued investigation of the Gateway Ammunition Plant.

The Court: Well, as far as it applies to the Gateway Ammunition, I don't think there is any connection [1,299] between the two.

Mr. London: I would like for the record, and the Court's information, in the article of yesterday, being Exhibit 14, one of the paragraphs of the article reads,

"The grand jury was convened to probe organized crime and along with gambling indictment against three Steamfitter Union leaders now on trial."

That is an article dealing with the Gateway Ammunition situation.

The Court: When the jury comes back, I will just ask them if they read anything. I will reserve a ruling until such time.

Mr. London: May these be——

The Court: They will be received. Mr. Bailiff, will you bring the jury back, please?

(Whereupon defendants' Motion Exhibits Nos. 13, 14 and 15 were received in evidence.)

(Thereupon the jury returned to the courtroom, and the further following proceedings were had:)

The Court: Members of the Jury, I want to ask you one question. If any of you have an answer to make, just raise your hand.

Since at least the 12th—that was Wednesday—there have been articles appearing in the newspapers on the evening of—since the 11th, Wednesday evening, Thursday evening, and [1,300] Thursday morning and this morning, articles appeared in the newspapers concerning this trial.

Has anybody read any of those articles? If so, raise their right hand.

Let the record show that none of the jurors have raised their right hand.

Your motion will be denied. Call your next witness, please.

GEORGE BRITTON,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? A. George Britton.

Q. And where do you reside, Mr. Britton? A. 352 South Margaret, Ferguson.

Q. With whom do you reside? A. My wife.

Q. Do you live there with your family, your wife? A. Yes, sir.

Q. What is your occupation? A. Pipefitter.

Q. And are you presently employed? A. Yes, sir.

[1,301] Q. By whom are you employed? A. Stern-Rogers, at Weldon Springs, Missouri.

Q. How long have you been employed by Stern-Rogers? A. Since February; the first of February.

Q. 1968? A. Yes, sir.

Q. And for whom were you employed prior to that? A. Mason-Rust.

Q. Where was that employment? A. Scullin Steel.

Q. Now, are you a member of Pipefitters Local 562? A. Yes, sir, I am.

Q. How long have you been a member? A. Since '42.

Q. That would be about twenty-six years? A. About that; yes, sir.

Q. Are you familiar, sir, with the Voluntary Fund? A. Yes, sir.

Q. Did you sign a Voluntary Contribution Card? A. I most certainly did, sir.

Q. And do you contribute to this Fund? A. Yes, sir, I do.

Q. And is your contribution voluntary? A. Yes, sir. A hundred per cent.

[1,302] Q. Has anyone ever told you you had to contribute? A. No, sir. I was told I did not have to.

Mr. Daly: I have no further questions.

Cross-Examination.

By Mr. Riddle:

Mr. Riddle: Excuse me just a second, Your Honor.

Q. (By Mr. Riddle) You said you are a member of the Fund? A. A member? I am a member of Pipefitters Local 562. I give to the Fund; yes, sir.

Q. Well, are you a member of the Fund? Did you ever hear that expression used? A. No, sir, I don't believe I ever have.

Q. The only thing that you know that you are a member of is Local 562? A. 562; yes, sir.

Q. And you have a card showing you are a member of 562? A. I have a Union book showing that; yes, sir.

Q. If you have never heard of the Fund, I assume from that you have never attended any meetings of the Fund? A. Well, sir, the Fund is something now I don't understand what you are talking about, the Fund. The Political Fund?

Q. Yes. [1,303] A. Yes, sir.

Q. Are you a member of that? A. I don't quite understand the meaning of member on that. I voluntarily give

to this Fund, yes, and I have signed a card, but now being sworn in as a member, or anything, that never happened.

Q. Never was mentioned. You never heard of the membership in the Fund? You never heard of that? A. No, sir. Truthfully, I have not.

Q. Now, sir, I take it then that you never attended any meetings of the Political Fund? A. Well, sir, I worked out of town quite a bit now, and some of these meetings I could not get in to; that is true.

Q. But you never even heard of any meetings of this so-called Political Fund? A. Truthfully, no, sir.

Q. Do you get notice of all meetings that comes from the Union hall? A. On Union meetings, yes, sir.

Mr. Daly: Your Honor, may we approach the bench?

(Thereupon a colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury and the reporter.)

The Court: If there are any witnesses in the [1,304] courtroom, I wish they'd go out the back door and walk around either side. There is a witness room. What is the number of that room? 319.

(A witness left the courtroom.)

Q. (By Mr. Riddle) Sir, do you know what happened to the money that you paid into this Political Fund? A. Do I know what happened, sir? No, sir, truthfully, I do not know what happened. I know what my thoughts were was going to happen to the money. It would be strictly for political funds and for candidates that we thought would benefit our Local, and that was my impression of it.

Q. Well, sir, was it your impression that this money was being paid in for your Local's use for political purposes? A. Not for my Local's use.

Mr. London: I object to it as calling for a conclusion; it is not binding.

The Court: He's already answered the question.

Q. (By Mr. Riddle) Sir, did you understand that all the money that you paid in, and the others, would be used for political purposes, and political purposes only? A. This is true; yes, sir.

Q. What about the money that you paid in for a time in the Callanan Fund?

Mr. Daly: May we object to that, and ask it be [1,305] stricken, and the jury instructed to disregard it?

The Court: It will be overruled.

Q. (By Mr. Riddle) What was your understanding of the money that was paid into the Callanan Gift Fund?

Mr. Daly: I object to that.

The Court: Well, it is the same question. It will be the same ruling.

The Witness: Well, the money that was paid into the Callanan Gift Fund was for Mr. Callanan to do with what he seen fit, as far as I was concerned.

Q. You paid into that also, did you? A. Yes, sir.

Q. You did vote for that at a meeting?

Mr. Daly: Your Honor, may the record show that I object to each and every question concerning the Gift Fund?

The Court: The record will show the objection will be overruled.

Q. (By Mr. Riddle) Did you vote for that Callanan Gift Fund? A. Yes, sir.

Q. Was that at a Union meeting? A. No, sir.

Q. What kind of a meeting was that? A. That was after—I think that was taken up after [1,306] the regular Union meeting, sir.

Q. At the Union hall? A. Not at the Union hall; no, sir.

Q. But at a place where the Union had a regular meeting? A. Yes, sir.

Q. And it was taken up after the other meeting, you say? A. That was taken up after the regular Union meeting was adjourned, I believe.

Q. Was it at the same building? A. Yes, sir.

Q. Same people preside? A. No, sir, I don't think the same people presided. I think—well, this is a hard question for me to answer, sir.

Q. Well you know what I mean by presiding, do you? A. I most certainly do.

Q. Well, you say it is a hard question for you to answer. Is it because you don't remember? A. Well, in a way, but I do remember that some of the local members got up, and there was a short recess, and I don't remember if they all went back up on the stand or not, sir.

Q. Did you see any members of the Local leave between the two meetings? A. Well, I was busy myself, sir, heading for the restroom, and everything else, to see what any body else was [1,307] doing.

Q. Now, did you attend any meeting when it was decided to cut off that Callanan Gift Fund and resume the Political Fund payments? A. Yes, sir, I was at that meeting.

Q. Where was that held? A. Where all our meetings are held. At the Electricians hall.

Q. That is where all your Union meetings are held? A. Well, as of late.

Mr. Riddle: I have nothing further to ask this witness.

The Court: All right. Any redirect?

Mr. Daly: No, Your Honor.

The Court: All right. Step down. Call your next witness.

(Witness excused.)

CLARENCE B. GILLEY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Clarence B. Gilley.

[1,308] Q. Where do you live, Mr. Gilley? A. Ballwin.

Q. Your address, sir? A. 220 Pleasant Grove.

Q. Do you own your property out there, sir? A. Yes, sir.

Q. Married man? A. Yes, sir.

Q. Mr. Gilley, are you a member of Pipefitters Local 562? A. I am.

Q. And how long have you been a member, sir? A. About since 1942.

Q. Where are you working now, Mr. Gilley? A. Ralston Purina, on Chouteau Avenue.

Q. How long have you been on that job? A. About four months, I believe; something like that.

Q. Mr. Gilley, are you familiar with the Voluntary Fund? A. Yes, sir.

Q. Did you sign a Voluntary Contribution Card? A. Yes.

Q. And do you contribute into the Voluntary Fund? A. Yes, sir.

Q. How do you make your contributions? Somebody pick them up for you, or do you take them in to the Voluntary Fund office? [1,309] A. I pay them on the job.

Q. Right on the job? A. Yes, sir.

Q. Do you pay to the Fund regularly? A. Yes, sir.

Q. Have you ever attended any meetings of the Voluntary Fund? A. Yes.

Q. These meetings are separate and distinct from the Union meetings? A. Yes, sir.

Mr. Riddle: We will object to that as being leading and suggestive, Your Honor.

The Court: Be sustained. Don't lead the witness.

Q. (By Mr. Riddle) How many of these meetings have you been to, Mr. Gilley? A. Oh, I don't recollect; a few.

Q. Do you consider the contributions to the Fund as dues?

Mr. Riddle: I object to that as leading and suggestive, Your Honor.

The Court: Well, I think it is certainly leading and suggestive. I'll sustain it on that ground. Go ahead, Mr. London.

Q. (By Mr. London) Are you a foreman, Mr. Gilley? [1,310] A. No, sir.

Q. Do you hold any position of any type, other than journeyman, sir? A. No, sir.

Q. You are a Democrat, Mr. Gilley? A. Yes.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you say you attended a few of these meetings of the Fund? A. Yes.

Q. Did you listen to what was said, and what explanations were made, and how it was to be handled? A. Yes.

Q. What it was being used for? A. Yes, sir.

Q. Sir, did you hear any explanation being made that this money was being held separate and aside from the regular Union fund money? A. Yes; separately.

Q. Sir, were you told why it was being held separately? A. I don't recollect that, why it was. I understood it as Political Fund contribution separate from the Local.

[1,311] Q. Well, sir, did you understand, or were you told that these funds were being maintained in a separate bank account? A. Separately; yes.

Q. Then were you told why it was separate and apart from any regular Union funds? A. No, I don't. I recollect that it couldn't be mixed up with the Local at all.

Q. Yes, sir. You said it couldn't be mixed up with the Local? A. No. It had to be separate.

Q. All these payments that you have made over a period of several years—— A. Yes. Since it's been in effect.

Q. ——you have made those payments to Union stewards? A. Yes.

Q. Out on the job? A. On the job; yes, sir.

Q. Have you ever gotten behind? A. No, I've never.

Q. Always current? A. Always current.

Q. Pay every Monday? A. Usually. Yes, sir, on Monday morning.

Q. How much do you pay every Monday morning now? [1,312] A. $2.50. 50 cents a day for five days.

Q. How do you know that that's the amount that you ought to contribute? A. Well, that's—we signed the pledge card for this amount, and we pledged that much.

Q. $2.50 each week? A. 50 cents a day. If it is four days, it is only $2.00. I mean 50 cents a day.

Q. Sir, do you remember when it was a dollar a day, $5.00 a week? A. I remember; yes, sir.

Q. I guess you never did pay any more than that, or any less? A. I never paid any more than five; a dollar a day.

Q. Never paid any less than that? A. Now, yes. 50 cents a day.

Q. You never paid anything less than the going rate? A. No, no, no.

Q. I guess you are current on your regular dues and assessments also? A. Yes, sir.

Q. Sir, were you ever at a Fund meeting when any discussion was made of using proceeds or money in this Fund for the purpose of buying season tickets for the hockey game? [1,313] A. No, sir. I wasn't at that, if there was one.

Q. You never heard of that? A. No, I didn't.

Q. Were you ever at a meeting when a decision was made to buy season tickets for the baseball—— A. No, sir.

Q. ——season. A. No, sir.

Q. Or a box for the baseball season? A. No, sir.

Q. Were you ever at a meeting when a decision was made to buy an automobile? A. No, sir.

Q. For Mr. Callanan, from the Fund? A. No, sir.

Q. Were you ever at a meeting when a decision was made to buy a farm up around Clarksville, Missouri, from the proceeds of the Fund? A. No, sir.

Q. Did you ever hear of the Political Fund, Incorporated? A. Incorporated?

Q. Yes. A. No. No, sir.

Q. Were you ever at a meeting when someone was [1,314] authorized to have in excess of a hundred thousand dollars in cash in a safety deposit box? A. No, sir.

Q. Sir, were you ever at a meeting when a decision was made to buy house trailers for any member of the Fund? A. No, sir.

Q. Were you ever at a meeting when any person, including the Director, ever said that, "Now, members, we have a million or so dollars in the Fund"? Or fifty thousand dollars? Or any amount of money in the Fund? A. No. No. No, sir.

Q. Nobody ever told you at any meeting how much money was in the Fund? A. No, not that I recollect; no, sir.

Q. Did anybody ever tell you how much had been spent out of it? A. No.

Q. Did you ever hear it discussed at the meeting as to whether or not the money could be used for the personal use of officers and directors of the Fund and the Union? A. No, sir.

Q. Were you ever at a meeting of the Fund when it was decided to vote Mr. Lawrence Callanan a salary of $22,000 a year from the Fund? [1,315] A. No, sir.

Q. You haven't heard of any of these things? A. No, sir.

Q. Well, as a member of the Fund, were you ever invited to sit in the season boxes at the hockey game? A. No, sir.

Q. In the season boxes at the baseball game? A. No, sir.

Q. Were you ever invited to the Stadium Club? A. No, sir.

Q. Did you ever hear of the Stadium Club? A. I've heard of it.

Q. Sir, did any person ever tell you that 20 per cent, or 50 per cent, or some other percentage of the total money paid into the Fund would be used for things other than political purposes? A. No, sir.

Q. You understood that a hundred per cent of it would be used for political purposes? A. That's right. That's right.

Q. Would you have paid into the Fund had you understood that only a part of it was going for political purposes? A. No, I don't believe I would.

Q. You would not have paid? [1,316] A. No, I don't believe I would; no.

Q. Would you have paid into the Fund had you known that proceeds or money from that Fund were being used to pay Mr. Callanan a salary of $22,000 a year? A. No, sir, I wouldn't.

Q. You would not have paid? A. No, sir, I wouldn't.

Q. Would you have paid into the Fund had you known that as much as $3,000 a year was being paid for season box seats for the hockey season? A. I would not.

Q. Would you have paid into that Fund had you known that over a hundred thousand dollars was being spent for a farm up near Clarksville, Missouri, that would be titled in the name of the Fund, Incorporated? A. No, I wouldn't.

Q. You mean none of these things have ever been called to your attention? None of these type of expenditures have ever been called to your attention? A. No.

Q. Sir, you have a family? A. Yes, I do. Not at home.

Q. Yes, sir. You have been working as a pipefitter at least since 1963? [1,317] A. Yes, sir.

Q. And have been paying regularly into this Fund? A. Yes, sir.

Q. Each and every week? A. Yes, sir.

Q. At a time, you were paying at least $5.00 a week, or $20.00 a month? A. Yes, sir.

Q. And thought all the time that every penny of it was used for political purposes, and political purposes only? A. That's right.

Q. Would you have voluntarily paid had you known that the facts were otherwise? A. No, I wouldn't; no.

Q. Sir, you indicated that you signed a Voluntary Contribution Agreement? A. Yes, sir.

Q. I believe you called this a pledge card? A. Well, voluntary pledge card; yes, sir.

Q. Well, now, sir, when did you first hear that it was a pledge card? A. Well, I don't know. That's just a matter of speech on my part, I guess.

Q. Have you heard it referred to as a pledge card only [1,318] within the last week or ten days? A. No; before then.

Q. You did? A. Yes.

Q. Sir—— A. You pledge a contribution, just like you would anything else.

Q. Did you attend a little meeting out at the hall last Wednesday night? A. No, sir, I did not.

Q. Did you hear of that meeting? A. No, I didn't get anything on it. I didn't hear much about it.

Q. Did you hear anything about it? A. I heard—I knew there was a meeting; yes, sir.

Q. Were you told what the purpose of the meeting was? A. No, sir, I was not.

Q. Now, sir, tell this Court and jury if anyone has suggested to you that you call this Voluntary Contribution Agreement a pledge? A. No one.

Q. Within the last week or ten days? A. No one has suggested that to me.

Q. You mean you use the word pledge? [1,319] A. As a matter of speech, I guess you would call it; yes.

(Thereupon Government's Exhibit No. 216 was marked by the reporter for the purpose of identification.)

Q. What do you understand a pledge to be? A. Well, you pledge a contribution to a certain thing, and you fulfill it. You make your contribution.

Q. And you pledge for an exact amount? A. Yes; that's right.

Q. Now, when you signed this card, did you specify on there a specific amount? A. On this contribution, yes.

Q. Contribution, you specified a specific amount? A. Yes.

Q. Are you sure of that? A. I'm almost positive.

Q. Are you sure you just didn't sign it in blank? A. No.

Q. And not even read it? A. I read it; yes.

Q. I'll show it to you, sir, and ask you to see if that is a true copy of the one that you signed?

(Mr. Riddle handed exhibit to the witness.)

A. That's it.

Q. Is it? [1,320] A. Yes.

Q. Is that your signature on it? A. That's my signature.

Q. Now, sir, can you look at that and see how much—A. No.

Q. ——you pledged? A. No, I didn't put any amount.

Q. You didn't put any amount in it, did you? A. No, sir.

Q. You just left that up to them. Would you pay whatever was being charged? A. Whatever was agreed on.

Q. Well, this agreement here was sort of an open agreement? A. Well, it was understood that it would be 50 cents a day.

Q. Well, back on January the 11th of 1963, was it 50 cents? A. Well, '63, that was—I believe that was a dollar a day then, sir.

Q. $5.00 a week? A. Yes, sir.

Q. Sir, was it your understanding that these payments of $5.00 a day, or up to $20.00 a week—or $5.00 a week, up to [1,321] $20.00 a month, were paid by you because it was to the benefit of the Union? A. Yes, sir.

Q. You considered this Union business and Union activity? A. Not directly connected with the Union, the running of the Union, no. As a political fund.

Q. I see. Now, monies that you spend for purely legitimate and proper union purposes, you get an accounting of that? A. Yes.

Q. You have financial statements rendered? A. Yes, sir.

Q. And these are passed out, and all members have access to them? A. Yes, we have an accounting of it; yes.

Mr. Riddle: Yes, I believe I have nothing else to ask of this witness.

The Court: Any redirect?

Mr. Nangle: Could we have a moment, Your Honor?

The Court: Yes.

Mr. Riddle: I'd like to offer in evidence the Government's——

The Court: I think you better offer them at the time of your rebuttal.

[1,322] **Redirect Examination.**

By Mr. London:

Q. Mr. Gilley, I am going to hand you what Mr. Riddle has had marked as Government's Exhibit 216 for identification. That is the card that you testified—that is a copy of the card that you testified that you signed; is that correct, sir? A. Yes.

Q. Would you read that out loud, please?

Mr. Riddle: If it please the Court, it is in evidence and——

The Court: Is this the Pipefitters Voluntary Fund card?

Mr. London: Yes, sir.

The Court: It's been received, read several times.

Mr. London: I know, but in view of some of Mr. Riddle's questions, I'd like to have him read it so I can question him about various portions of it, Your Honor.

The Court: Well, he's read it. I think you can question him about it, Mr. London.

Q. (By Mr. London) Mr. Gilley—I am sorry.

The Court: There's been so much time consumed in the exchange between us as there would have been in the reading. Go ahead.

Mr. London: I agree. Mr. Gilley, I direct your [1,823] attention to the second paragraph of that card. Does it say that the money that you are contributing is to be expended by those in charge of the Fund, in their sole judgment and discretion, for political, educational, legislative, charity and defense purposes? A. It says that.

Q. And at the time that you signed the card, it said that, didn't it, sir? A. Yes.

Q. Now, Mr. Riddle has asked you, sir, about some baseball tickets and some hockey tickets. Do you know how many candidates, or legislators, or congressmen were entertained by the Voluntary Fund in those baseball seats, or in those hockey seats, sir? A. No, sir.

Q. Do you know how many candidates, or legislators, or politicians were entertained by the Fund at the Stadium Club, sir? A. No, sir.

Q. You would have no objection if they were using the money to entertain these congressmen and politicians if it was beneficial to labor? A. If it was beneficial to labor I would have no objection.

[1,324] Q. And this farm down at Clarksville, are you aware that that property is to be turned into a retirement home for steamfitters? A. Yes, sir.

Q. You knew that, didn't you, sir? A. Yes, sir.

Mr. London: That's all.

Recross-Examination.

By Mr. Riddle:

Q. Sir, you knew about the farm up at Clarksville? A. Yes.

Q. Did you understand that that was a farm purchased by the Union? A. By the Union?

Q. Yes, sir. A. Yes.

Mr. London: I object to the form of the question, Your Honor, as being a conclusion on the part of this witness. What he understood would not be binding in any way on the parties in this cause.

The Court: It will be overruled.

Q. (By Mr. Riddle) You have been told at regular Union meetings that this farm was purchased by the Union for and on behalf of the Union membership? [1,325] A. Yes, sir.

Q. Sir, this is the first time this morning that you ever knew that that farm was purchased out of the Political Funds? A. The first time I heard of it.

Q. Yes, sir. You consider that a legitimate, proper expenditure for the Union to make, namely, a farm for the enjoyment and recreation of its Union members? A. For the Union to do that; yes.

Q. Yes, sir. Did anyone ever explain to you why funds were not spent directly out of the Union for that purpose, rather than having funds spent out of an unaccountable account? A. No.

Mr. Riddle: That's all.

Mr. London: Nothing further.

The Court: You may step down. Call your next witness.

(Witness excused.)

HARRY TIPPETT,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Tippett, would you state your full name, please, sir? A. Harry Tippett.

[1,326] Q. And where do you live? A. 732 Troy Road, Collinsville, Illinois.

Q. Do you own your own home over there? A. No.

Q. Mr. Tippett, are you a member of Local 562? Pipefitters Local 562? A. No.

Q. Do you work under the jurisdiction of Pipefitters Local 562? A. Yes.

Q. And are you a member of some other local? A. Yes, sir.

Q. And what local is that, sir? A. Local 798, Tulsa, Oklahoma.

Q. And how long had you worked under the jurisdiction of Local 562? A. Seven years.

Q. Seven years? A. Yes, sir.

Q. Beginning what date, sir? A. In August of '62.

Q. August of '62? Have you worked continuously under the jurisdiction of 562 since then? A. No. I worked out of a couple other locals when we [1,327] were out of work in this area.

Q. I see. And for how long did you work under other locals during this 7-year period? A. A matter of sixty days, at the most.

Q. Except then for sixty days, you have worked under the jurisdiction of 562 for a period of seven years back in 1962? A. Yes, sir.

Q. Now, sir, where do you work at the present time? A. Hussmann Distributing Company.

Q. And how long have you worked there? A. Three years.

Q. Now, Mr. Tippett, did you ever sign a card, Contribution Card to the Voluntary Political Fund? A. Yes.

Q. And do you remember when you did that? A. Several years ago. I don't recall when.

Q. Now, have you ever attended any of the meetings of the Voluntary Political Fund? A. No, sir.

Q. Now, have you contributed to the Voluntary Political Fund? A. Up until eighteen months ago, yes, sir.

Q. And what have you done during the last eighteen months? A. I haven't contributed anything.

[1,328] Q. And have you continued working during that —since you stopped contributing? A. Yes, sir. I have had financial trouble, and I stopped.

Q. You stopped? A. Yes, sir.

Q. Now, has anyone come to you and talked to you about the fact that you are not contributing? A. No, sir.

Q. Has anyone said anything to you at all about it? A. No, sir.

Q. Were your contributions that you made prior to a year and a half ago, voluntary? A. Yes, sir.

Mr. Randall: I believe that's all, Your Honor.

The Court: All right. Mr. Riddle.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do you remember when you signed this card originally? A. Not offhand. I would say six or seven years ago when I started, first started working out of this Local.

Q. Just as soon as you came on the job for this Local, you signed one? [1,329] A. I was asked to sign one; yes.

Q. By whom? Foreman? Steward? A. Steward on the particular job.

Q. Union steward? A. Yes, sir.

Q. Did he give it to you the first day you came on the job? A. I don't recall, sir.

Q. Do you remember what the charge was into the Fund? A. At that time, I think it was fifty cents or a dollar. I don't recall which.

Q. Was it raised? A. Yes, sir, it's been raised in the last several years.

Q. Do you remember when it was raised the first time? A. '64; something along in there, possibly.

Q. Do you know what it was raised up to? A. It was fifty cents, and then an additional fifty cents later.

Q. Sir, I'll show you what's been marked the Government's Exhibit 206, and ask you to examine it and study it closely for the purpose of refreshing your recollection. Can you see it on this easel? A. Yes, I can see it.

Q. You were what they generally ~~refer~~ to as an out-of-towner? [1,330] A. Yes, sir.

Q. Now, sir, by looking at this exhibit, I believe it indicates that there was an increase from $1.50 per day about October 15, 1963, up to $2.00 a day. Does that refresh your recollection as to when that increase went into effect? A. That could be in that general vicinity; yes, sir.

Q. And did you go along with that increase? A. Yes, sir.

Q. Did you pay it every week? A. Yes, sir.

Q. Up until what time? A. Up until March of 1967.

Q. Up until March of '67? A. Yes, sir.

Q. What job were you working on then? A. I was working for the company I am working for now, sir.

Q. Who is your steward? A. Edward Joyce.

Q. Edward Joyce? A. Yes, sir.

Q. Was he the man you had been paying to all along? A. Either him, or mailed it in to the Local.

Q. All right. Now, do you remember the first week you decided not to pay? [1,331] A. Yes, sir, I remember it very well.

Q. What happened? What were your conditions? A. Well, we had a couple deaths in my family, and I had to take care of the funeral expenses for the two people.

Q. I see. Now, you told Mr. Joyce about that? A. I don't recall whether I told him. He knew about the death in the family. As far as the payment on the thing, I just stopped paying it, because I had to make these other obligations.

Q. You didn't tell him why? A. I didn't pay him all the time, sir. I mailed it in, or whenever I happened to see him. Sometimes I don't see him for two or three months at a time.

Q. My question is, sir, did you tell Mr. Ed Joyce? A. Not that I know of.

Q. Why you were going to stop? A. Not that I know of; not that I can recall.

Q. Did you drop a note to the Union office? A. No, sir.

Q. Did you talk to anybody down at the Union office? A. No, sir.

Q. Well, when Ed Joyce came around to collect that day, is it your testimony you didn't tell him anything?

A. He never come to me to collect, sir. Like I say, I [1,332] didn't see him for two and three months at a time. Whenever I would see him, if I wanted to give him the money, I'd give it to him. He would never come and approach me for it.

Q. All right, sir. You are not paying now? A. No, sir.

Q. All right, sir. Sir, during the period of time that you were paying $2.00 a day, or $10.00 a week, did you know what the regular members were contributing at that time? A. Yes, sir.

Q. What were they contributing? A. A dollar.

Q. Was any explanation ever made to you as to why you were paying twice as much as they were? A. Well, I wasn't in this Local, and I was happy to pay the $2.00 to work out of this Local.

Q. Yes, sir. This is why you paid the $2.00, to work out of this Local? A. Yes, sir.

Q. You felt that it was necessary in order to work out of this Local? A. No, sir.

Q. Oh, I see. Well, why were you paying the $2.00 then each and every week for that period of time? A. Because I wanted to pay it.

[1,333] Q. Because you wanted to work, didn't you? A. No, it wasn't that. I volunteered this. When I decided not to pay it, no one said a thing to me.

Q. But the time you were paying it, all that period you wanted to work, and you wanted a job? A. No. I had the job. I just decided to pay it.

Q. The first week you worked? A. Yes, sir, the first week I worked I paid it.

Q. And you thought that it was all right for you to pay twice as much as the local members? A. I was paying it as an individual. I didn't care what the others did. I was happy to pay the two, would pay three if they

raised it to three; if they raised it to five, be happy to pay it.

Q. Why? A. Because I have been well satisfied in this Local.

Q. Sir, you worked in two other locals? A. I have worked in numerous locals.

Q. But during the past few years? A. Yes, sir.

Q. What did you pay them for working on their jobs?

Mr. London: I object to the form of the question, Your Honor.

Mr. Riddle: I will withdraw that question.

[1,334] Q. Did you pay them anything? A. Yes, sir.

Q. What? A. It averaged out about the same, a dollar or two dollars a day, whatever particular local you work out of.

Q. Those were called assessments, weren't they? A. That is because——

Q. Weren't they called assessments? A. I don't know what they called them, sir. The steward on that particular job that I was working on come by and said that it cost you so much a day, and here's the amount. If you want to pay it, fine. If you don't you don't have to.

Q. On the other jobs? A. Yes.

Q. On the other locals, where were you working? A. Oh, I worked in East St. Louis, Illinois; worked in Chicago, Illinois; worked in Moline, Illinois.

Q. When did you work in East St. Louis? A. In East St. Louis, I worked there in '63.

Q. '63? A. Yes, sir.

Q. What did it cost you to work on that job? A. I think we paid $5.00 a week, sir.

Q. Who did you pay that to? [1,335] A. At that particular job, I paid it to the steward.

Q. Was that voluntary? A. Yes, sir.

Q. Was it into a voluntary fund? A. I don't know, sir. If you didn't want to pay it, you didn't have to.

Q. Oh, you didn't have to pay those people in East St. Louis anything? A. No, sir.

Q. You didn't have to? A. No, sir.

Q. As a member of 562, were you told what all this money you were paying in was used for? A. Political Fund.

Q. Anything else? A. And to run the Political Fund is mostly what I have heard; yes.

Q. Anybody ever tell you it was used for any other purpose? A. No, sir.

Q. As far as you knew, that was all of it? A. Yes, sir.

Q. Have you been agreeable to paying into that Fund? A. Yes, sir.

[1,336] Q. $5.00 a week, even though it were used for other purposes? A. I never paid $5.00 a week.

Q. You never did pay $5.00? A. I paid $10.00 a week.

Q. $10.00 a week, yes. Would you have paid your $10.00 a week had you known it was used for purposes other than political matters? A. I don't know, sir. They never told me that it was being used for anything other than political matters. If I decided I didn't want to pay it, I wouldn't pay it.

Q. Sir, had you known it was being used for the purpose of a farm up near Clarksville, Missouri, for the benefit of the members of Local 562, would you still have been willing to pay your $10.00 a week? A. I didn't hear the first part of that, sir.

Q. If you had known that part of the money, at least $150,000 of it, was being used to buy a farm for the use and benefit of members of 562, would you have been will-

ing to pay your money? A. Yes, sir, I'd be willing to pay it.

Q. Just to help the members of 562? A. Right.

Q. Even though you and your family couldn't use it? [1,337] A. Well, we use all the facilities that 562 has at this point, beings I work out of it, and I think that I would be subject to use whatever they had.

Q. Sir, during this time that you were working for 562, do you continue to pay your dues and assessments back in Tulsa? A. Yes, sir.

Q. What do they run you a week? A. They run $10.00 a month.

Q. Flat amount? A. Yes, sir.

Q. When you traveled these other jobs, did you use a travel card? A. Yes, sir.

Q. Every time you went to East St. Louis, and Chicago, and the other places, you used a travel card? A. Yes, sir.

Q. What did that travel card cost you a month? A. The travel card never cost me anything out of the particular local. They charge you to put the travel card in in Chicago. In East St. Louis, they never charged anything to put the travel card in.

Q. Is the travel card rate $8.00 a month? A. Yes, sir.

Q. You have never used a travel card on a 562 job? [1,338] A. Not since I have been here; no, sir.

Q. And the $8.00 travel card cost is money paid directly into the Union? A. Right.

Q. That is, the host union, or the union that you are working for and under? A. Right.

Q. Would you rather pay into this Fund $20.00 a week than the $8.00 travel charge? A. Would I what, sir?

Q. Rather pay the $20.00 during all this period of time? A. What $20.00, sir?

Q. Well, excuse me. $10.00 a week. Would you rather pay the $10.00 a week? A. When I am working out of this Local here, yes.

Q. Than the $8.00 a month travel charge? A. I would rather pay the $10.00 a week, because I am entitled to the benefits of 562 when I pay the $10.00 a week.

Q. You are entitled to the benefits of 562 when you pay the $10.00 a week? A. Yes.

Q. And this is really why you pay it? A. No. I haven't paid it in eighteen months.

Q. This is why you did pay it? [1,339] A. I paid it because I was working out of this Local, and I am entitled to the benefits, and I wanted to help the Local as best I could, so I gave them $10.00 a week.

Q. Sir, did you attend a meeting last Wednesday night? A. I don't attend any 562 meetings.

Q. You never attended any meetings? A. Never been to a meeting of 562.

Q. What about any Fund meetings? Have you ever been to one of them? Have you ever been to any of them? Have you ever heard of any Political Fund meetings? A. I haven't attended any meetings of any kind.

Mr. Riddle: All right. That's all.

The Court: Any redirect?

Mr. Randall: No, Your Honor.

The Court: Step down.

(Witness excused.)

JAMES LACHTRUP,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

Q. State your name, please. A. Sir?

Q. State your name. A. James Lachtrup.

[1,340] Q. Where do you reside, Mr. Lachtrup? A. 564 Lind Road.

Q. Where is Lind Road? A. It is in Mehlville.

Q. Do you own your own home out there? A. Yes, I do.

Q. Are you employed at this time? A. Yes, sir.

Q. By whom, sir? A. Bechtold Corporation.

Q. And what is their occupation and business? A. They are building a powerhouse at Labadie.

Q. And what type work do you do at the powerhouse? A. I am a pipefitter.

Q. And are you a member of Pipefitters Local 562? A. Yes, sir.

Q. How long have you been a member of the Local. A. A little over twenty years.

Q. Are you familiar then with the Voluntary Fund? A. Yes, sir.

Q. And did you sign a Voluntary Fund agreement card? A. I did.

Q. And do you contribute to the Voluntary Fund? A. I do.

[1,341] Q. And how long have you been contributing, sir? A. Since it's been in force.

Q. Now, what is your position out at the Labadie Powerhouse? Are you a journeyman? A. Journeyman at this time.

Q. You don't collect any of the funds yourself then? A. No, sir, I don't.

Q. To whom do you pay your Fund? A. To my foreman.

Q. And has he ever told you that you had to pay this Fund? A. Never.

Q. Now, how much are you, at this time, donating to the Fund, sir? A. $3.75 a week.

Q. And that is based upon your overtime that you are getting out? A. True.

Q. What is your weekly wage? A. The total or take-home?

Q. Take-home. That is what counts. A. Take-home, approximately two fifty-two.

Q. That doesn't count the two dollars and seventeen cents per hour fringe benefits, or tax, or anything out of that? [1,342] A. No.

Q. You are paying $3.50 into this Fund? A. Three seventy-five.

Q. Now, do you know what the money that you pay in is used for, Mr. Lachrup? A. I have no idea.

Q. What is your idea? A. It goes to help elect representatives that are going to help labor, and so forth and so on.

Q. And are you in favor of this? A. Definitely.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you said you were a journeyman at this time? A. Yes.

Q. Have you been a foreman in the past? A. Yes, I have.

Q. How long were you a foreman? A. Well, at various times. The last time was, I was a general foreman for about three and a half years.

Q. Were you a regular foreman for a period of time? A. Yes.

Q. How long? [1,343] A. Well, with various companies it was one year to two years, and so forth.

Q. Well, you have been a foreman over the last ten years more than you have been a journeyman? A. I would say about half and half.

Q. About half and half. Who decides whether you are a foreman or a journeyman on the job? The Union? A. Well, no. The contractor.

Q. He decides that? A. Yes.

Q. Does the Union have to ratify that? A. They never have, that I know of.

Q. At that time that you were general foreman, did the Union ratify that? A. No.

Q. Sir, you have never missed a single payment into this Fund? A. Not to my recollection.

Q. You have always paid the established rate, whatever that was? A. Yes, sir.

Q. If it was 50 cents a day, you paid that? A. If it was so, yes.

Q. A dollar a day, you paid that? [1,344] A. Yes.

Q. You paid into the Callanan Gift Fund? A. No. To the Voluntary Fund.

Mr. Daly: Your Honor, may we object to that question, and ask it be stricken, and the jury instructed to disregard it?

The Court: Well, his answer was no, he did not contribute.

Mr. Daly: I object to the question, Your Honor.

The Court: All right. It will be overruled.

Q. (By Mr. Riddle) Sir, did you say that you did not contribute to the Callanan Gift Fund? A. To the Voluntary Fund I contributed to.

Q. All right. Well, it is your understanding that the Callanan Gift, whatever that was, was paid out of the Voluntary Fund?

Mr. Daly: I will object to all these questions concerning the Gift Fund. May our objections go to all of these questions by Mr. Riddle concerning the Callanan Gift Fund?

The Court: All right. It will go to all of them. It will be overruled.

Q. (By Mr. Riddle) Sir, did you understand that the Callanan Gift was to be paid out of the Voluntary Fund? A. If so, then I contributed to it.

Q. You just contributed just every week? [1,345] A. Yes.

Q. Into something? A. Into the Voluntary Fund.

Q. And if the proceeds from the Voluntary Fund for two or three months were diverted into a Callanan Gift Fund, then you—— A. I was all for it; yes.

Q. Sir, with the exception—Let me ask you this. Strike that question.

Do you know how much money was paid as a gift to Mr. Callanan? A. No.

Mr. London: May we approach the bench?

The Court: Come up.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. London: If the Court please, it is my recollection that the same or similar question was propounded by Mr. Riddle yesterday, and we objected to the question at that

time, and the Court sustained the objection, pointing out there that had no bearing upon the issues of this case, if my recollection serves me correctly.

We would now object to this question, incorporating all the grounds that have been raised with regard to questions [1,346] to the Gift Fund, and if, in view of the fact that this is in contradiction to the Court's ruling of yesterday, add that the question is being asked for the purpose of prejudicing the jury. We would request in addition to our objection that the jury be instructed to disregard it, that it be stricken, and that a mistrial be declared.

The Court: Well, I will sustain the objection. I will tell the jury to disregard it. I will deny the request for a mistrial. It seems as though I did sustain such an objection yesterday, Mr. Riddle.

Mr. Riddle: I think you did, Your Honor, and I'm not unmindful of the Court's ruling on that.

I think this is entirely different though. The witness has testified that he gave into the Fund right along continuously, and I think that the different situation is presented by his answer when he said whatever the Fund was used for during that period of time, then I gave into it, and it was for that distinction that I thought that this was distinguishable from the basis that the Court's ruling was yesterday.

The Court: It didn't make any difference to him what he was giving to, he was going to give. So I will sustain the objection as to what the amount was.

Mr. Riddle: What the amount was. All right, sir.

(Thereupon the trial was resumed before the jury as [1,347] follows:)

The Court: The jury will disregard that last question.

Q. (By Mr. Riddle) Sir, do you recall ever receiving any information as to what uses, for what purposes the money that you paid into this Fund were being used? A. Yes.

Q. When did you get such an explanation? A. I think it was brought up after one of the regular meetings. Now, as far as I can recollect—I'm not sure.

Q. What were you told at that time? A. It was for the election, to help in the election of people that could help the labor movement.

Q. Sir, were you told it was used for any other purpose? A. Yes, I think, if I recall correctly, I think it was brought up that it was to help Mr. Callanan in some way.

Q. Was a salary voted for him? A. I don't recall.

Q. Well, do you recall being told that he was being paid a salary of $22,260 per month—I mean per year? A. No, sir, I don't recall; no.

Q. That figure wasn't told to you, as you recall it? A. I don't recall at all.

Q. Do you know how much money has been paid into the Fund? [1,348] A. No, I don't.

Q. You don't have the slightest idea? A. No, sir.

Q. You don't know whether it is a million or two million? A. I wouldn't have any idea; no.

Q. Nobody has ever told you? A. No.

Mr. Riddle: I have nothing further.

Mr. Daly: Let me ask you one question.

Redirect Examination.

By Mr. Daly:

Q. The money that you contributed to the Fund, did you contribute that voluntarily? A. I sure did.

Mr. Daly: I have no further questions.

The Court: Anything else, Mr. Riddle?

Recross-Examination.

By Mr. Riddle:

Q. Do you pay your dues and assessments voluntarily? A. I do.

Mr. Riddle: Yes, sir.

The Court: Anything else?

Mr. Riddle: That is all.

Mr. Daly: No, Your Honor.

[1,349] The Court: Step down.

(Witness excused.)

The Court: Members of the Jury, we will have our morning recess. Bear in mind the admonition I have given you heretofore.

(Following a brief recess, a colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury and the reporter.)

(Thereupon the trial was resumed before the jury as follows:)

TOM McNAMARA,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. Will you state your name, sir? A. Tom McNamara.

Q. Where do you live? A. 7516 Ethel Avenue, Richmond Heights.

Q. Mr. McNamara, what do you do for a living? A. Pipefitter.

Q. Are you a member of Pipefitters Local 562? A. No, sir.

Q. Are you working on a job under the jurisdiction of [1,350] Pipefitters Local 562? A. Yes, sir.

Q. How long have you been working on a job under their jurisdiction? A. Approximately five years.

Q. Are you familiar, sir, with the Voluntary Fund? A. Yes, sir.

Q. Have you had occasion, sir, to sign a Voluntary Fund card, or contribution card? A. Yes, sir.

Q. When did you sign that, if you know, Mr. McNamara? A. 1964.

Q. And did you pay into the Voluntary Fund after the time that you signed that card? A. Yes.

Q. Are you paying into the Fund at the present time? A. No, I haven't paid for some time. Nobody has asked me for it.

Q. How long has it been since you have paid, sir? A. March, I'd say.

Q. March of this year? A. (Indicating yes.)

Q. Is that correct? A. Yes, sir.

[1,351] Q. Have you lost your job as a result of not paying? A. No, sir.

Q. Have you lost any overtime, or anything of that nature? A. No, sir.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. You say nobody has asked you for it since last March? A. That's right.

Q. Up until that time, did they ask you for it each week? A. Sometimes, and sometimes they wouldn't. They

generally tell you to go in and pay it yourself, if you wanted to.

Q. But since that time, nobody has asked you for it? A. No, sir.

Q. What month was this? A. That was March.

Q. Of 1968? A. Yes, sir.

Q. Where were you working in March of '68? A. I taken a trip to California, and then I paid up to date, and then I come back from California after taking a vacation out there, and I come back and I have been working since June 11, and I haven't paid any since then.

[1,352] Q. Oh, you haven't been working since June 11? A. I have been working every day since June 11, but I took a vacation in March.

Q. You took a vacation in March? A. Yes, and April, May.

Q. And you were gone for how long? A. Oh, I guess I was gone for six or eight weeks. Eight weeks, I'd say.

Q. And you began working after you came back? A. Yeah. June 11th I went back to work.

Q. Where did you go back to work then? A. Wohl Hospital.

Q. Wohl Hospital? A. Yes, sir.

Q. You say before you went on vacation you paid up to date? A. Yes, sir.

Q. How much did you owe at that time? A. I don't know. A couple weeks; two or three weeks.

Q. At the rate of what? How much a week? A. Two dollars a day.

Q. Ten dollars a week? A. Yeah.

Q. And you caught up before you left? [1,353] A. Sir?

Q. You caught up before you left? A. Yes, sir.

Q. Now, on the Wohl Hospital job, who was your foreman there? A. A fellow named Irving Connors.

Q. Sir, have you paid or not paid since you have been at the Wohl Hospital? A. I have not paid.

Q. And nobody has asked you for it? A. No, sir.

Q. How many were working on that job? A. Another man and myself. Connors and myself. Then, of course, we went from other jobs.

Q. Just you and Connors, the only two people on this job? A. Yes.

Q. And you are on it now? A. No, sir.

Q. How long were at the Wohl Hospital? A. Several weeks.

Q. Several weeks? A. Yes, sir.

Q. Nobody asked you for your money all through that period? A. No, sir. Nobody has asked me for it.

[1,354] Q. Is that the reason you didn't pay it? They didn't come around and ask for it? A. No. I generally go to the hall myself when I get a chance to pay it.

Q. But you just haven't had a chance to do it? A. I haven't had a chance to do it.

Q. Do you plan to catch up? A. Yes, some of these days when I get around to it.

Q. Do you feel that you have an obligation to pay it? A. No.

Q. How much do you owe now? A. I don't know. I have to check the days I worked, the days I didn't work.

Q. What local are you a member of? A. I am not a member of any local at the present time.

Q. So you aren't paying any dues or assessments now? A. No, sir.

Q. To no local? A. No, sir.

Q. You are paying nothing to 562? A. No, sir.

Q. When is the last payment you made to 562? A. The last payment—I never have made a payment to 562. The last time I gave to the Voluntary Fund was in March.

[1,355] Q. That's not 562? A. No.

Q. Did you ever attend any meetings where the use of the money that you and all the others are paying in was discussed? A. I believe I have; yes.

Q. One or more? A. One, I think.

Q. When was that meeting? A. Oh, I couldn't remember that, sir.

Q. Some time ago? A. Oh, yes; quite a while ago.

Q. What did you understand the money was to be used for? This $10.00 a week that you were paying? A. Well, it was Voluntary Fund for whatever the officers, or whoever was using it would see fit to use it, whether it would be Political Fund or what, I wouldn't know.

Q. You didn't care? A. I didn't care.

Q. Did you ever miss a week before you went on vacation in March of '68? A. I missed some because on account of the cold weather; yes.

Q. But not on account of being unemployed? A. I have never drawn unemployment in my life.

[1,356] Q. But for every day you worked before you went on vacation, you paid? A. Oh, yes.

Mr. Riddle: I have nothing further to ask this witness.

The Court: Redirect.

Mr. London: No, sir.

The Court: Step down.

(Witness excused.)

KENNETH L. SCHROEDER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Would you state your full name, please, sir? A. Kenneth L. Schroeder.

Q. Mr. Schroeder, where do you live? A. Route 1, Box 556, O'Fallon, Missouri.

Q. And, sir, are you a member of Pipefitters Local 562? A. Yes, sir, I am.

Q. How long have you been a member? A. Approximately fourteen years.

Q. And are you working now as a journeyman? A. Yes, sir.

Q. Have you ever been a steward or a foreman? [1,357] A. I am a foreman now.

Q. You are a foreman at this time. And for what company are you working? A. Minneapolis Honeywell.

Q. Now, are you familiar with the Pipefitters Voluntary Fund? A. Yes, sir, I am.

Q. Have you contributed to the Voluntary Fund? A. Yes, sir.

Q. Have you always contributed to it? A. Not on a regular basis.

Q. And how have you made your payments? A. In person and by check, depending on what circumstances may arise.

Q. To whom did you make them? A. To the Voluntary Fund.

Q. To the hall itself? A. No, not to the hall; to the Voluntary Fund department.

Q. I see. To the Voluntary Fund. But you mailed them in or took them in? A. Mailed them in or took them in.

Q. You did not make them on the job? A. On two occasions, yes, I would believe.

Q. I see. [1,358] A. That would be when I was at the powerhouse, or something like that.

Q. Did anyone ever speak to you about the fact that you were not making them on a regular basis? A. No, sir.

Q. Now, have you ever attended any Fund meetings? A. Yes, sir.

Q. Were any candidates present at some of these meetings? A. Yes, sir, I believe they were.

Q. Can you tell us who some of them were? A. Well, I would say Robert Young and State Representative Pat Hickey I would say. That would be State Senator. Other than that, I can't remember any.

Q. I see, sir. Now, were your contributions voluntary that you made? A. Yes, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Are you current on your payments now? A. No, sir. I believe I'm about, oh, three weeks.

Q. Three weeks behind? A. Um hmm.

Q. How much do you owe for these three weeks? [1,359] A. Well, it would be two fifty a week.

Q. So if you paid for these three weeks you'd be current? A. Um hmm.

Q. When you said that you paid, often that you didn't pay on a regular basis, you meant by that that you didn't pay every Monday morning? A. I didn't pay every Monday morning. I didn't pay every month sometimes. Sometimes it wasn't every two months.

Q. But you always caught up? A. Eventually, yes, I believe.

Q. And you always caught up at the going rate. Whether it was two and a half a week, or five dollars a week, you always—or whatever it was—you always caught up? A. Yes.

Q. So while you didn't pay on a regular basis, you always did pay? A. There may have been some errors in my calculations, or something like that, I didn't pay.

Q. But it was accidental, not intentional? A. Well, I would say so; yes.

Q. Sir, this Fund meeting that you attended, is that the only one you ever attended? A. No. There has been several.

Q. That you have attended? [1,360] A. Um hmm.

Q. At any of the Fund meetings that you have attended, were you ever given a report on what was happening to the money that you and the others were paying? A. I would think so; yes.

Q. What report was made to you? A. Specifically where the money was going, into specifics I couldn't say. Mostly to the Democratic organizations.

Q. Well, did they say they are using it for any purpose other than political purposes? A. No, I can't say that I heard that.

Q. Is it your impression now, and was it your impression then that all of the money was used for political contributions, political purposes? A. Yes, sir.

Q. Sir, did you ever get a report at any of these meetings that Mr. Lawrence Callanan was being paid a salary of $22,000 a year out of this money? A. I do believe I did hear something to that statement that he was being paid by the Voluntary Fund to serve, or maybe he wasn't.

I don't know. I would assume he would be. There is a salary connected.

Q. Was he being paid also by the Union? A. Well, naturally he is our business manager.

[1,361] Q. Your understanding was he was being paid by both the Union and the Fund? A. Well, I know he was being paid by the Union. By the Fund, I couldn't swear to that, sir.

Q. All right. Sir, were you ever told that $150,000 of this money was used to buy a farm up in Clarksville, Missouri? A. I know there's a farm being purchased up at Clarksville, Missouri; yes.

Q. Were you told whether that farm was paid for out of regular Union money or out of the Fund money? A. I would assume it was paid for out of the Fund money.

Q. Out of the Fund money? Were you told that? A. No.

Q. Why would you make that assumption? A. Well, because you can't spend Union funds for private property, I would assume.

Q. Is this private property? A. Not private property; other than money that was to do with the Union funds.

Q. Well, what do you understand the purpose of the farm is for? A. It is for recreational purposes of the 562 members.

Q. I see. Were you told how much the farm cost? A. In dollars and cents, no. I can't say that I honestly [1,362] have heard the price on it.

Q. Sir, were you ever told that some of the money out of the Fund was used to pay attorney's fees. A. No.

Q. As far as you know, it was not? A. As far as I know, it was not.

Q. Sir, were you ever told that some part of the funds were used to buy Mr. Callanan an automobile? A. No, sir, I don't know that.

Q. Sir, were you ever told that some of the funds were used to buy a box seat for the hockey games, costing approximately $3,000? A. I don't recall anything to that effect either.

Mr. Riddle: I have nothing further to ask this witness.

The Court: Any redirect?

Mr. Randall: No, Your Honor.

The Court: Step down.

(Witness excused.)

ROBERT J. O'LEARY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? [1,363] A. Robert J. O'Leary.

Q. And where do you reside, Mr. O'Leary? A. 1174 Ashford Drive, St. Louis County.

Q. Are you buying that home out there? A. Yes, sir.

Q. Are you employed at the present time, Mr. O'Leary? A. Yes, sir.

Q. And by whom are you employed? A. Bechtold Corporation.

Q. And what business is Bechtold Corporation in? A. They are building a powerhouse in Labadie, Missouri.

Q. Where is Labadie, Missouri? A. Approximately fifty-five miles southwest.

Q. Are you working for Bechtold at a powerhouse out there? A. Yes, sir.

Q. How long have you been working out there? A. Around five weeks.

Q. How long have you been following the pipefitting trade, Mr. O'Leary? A. Three years.

Q. And are you presently a member of Local 562? A. Yes, sir.

Q. How long have you been a member of Local 562? A. Approximately two years.

[1,364] Q. And you worked a year for the Local, and you worked a year in pipefitting prior to the time that you became a member of the Local; is that correct? A. Between ten months and a year; yes, sir.

Q. And during this time that you worked as a pipefitter, before you became a member—pardon me—before you became a member of the Local, did you work under 562 jurisdiction? A. Yes, sir.

Q. Now, are you familiar with the Voluntary Fund? A. Yes, sir.

Q. And do you contribute to the Voluntary Fund? A. Yes, sir.

Q. And did you contribute to the Voluntary Fund, sir, prior to the time that you became a member of the Local? A. Yes, sir.

Q. And prior to the time that you became a member of the Local, how much were you contributing to the Voluntary Fund? A. Well, truthfully, I couldn't tell you the amount. It was based on the hours you worked.

Q. Was it $2.00 per day? A. Yes, sir.

Q. And now that you are a member of the Pipefitters Local, how much do you pay into it? A. Half a dollar a day.

[1,365] Q. It is 50 cents a day? A. Right.

Q. Are these payments that you make into the Voluntary Fund at this time voluntary? A. Yes, sir.

Q. Were the payments or donations that you made prior to the time that you became a member of the Local, were they also voluntary? A. Yes, sir.

Q. Now, what is your salary as a steamfitter? A. The pay salary is $5.60 an hour.

Q. Are you a journeyman or foreman? A. Journeyman.

Q. Have you ever been a foreman? A. No, sir.

Q. Have you ever been a steward? A. No, sir.

Q. Then you have never collected any of the Voluntary money from any man other than yourself? A. No, sir.

Q. Who do you ordinarily pay it to? A. My foreman.

Q. Has this been true on any of the jobs you were on? A. Yes.

[1,366] Q. Has anyone ever told you, before you were a member of the Local, or since you have become a member of the Local, that you had to pay this money? A. No, sir.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, what is your former union affiliation before 562? A. I was a bricklayer.

Q. And you became a member of 562 on what date? A. November, 1966.

Q. So all through 1964 and—Can you see this chart, sir? A. Now I can.

Q. Do you understand the chart from looking at it? Pipefitters Voluntary Fund out-of-towners. Were you considered an out-of-towner until you became a regular? A. Yes, sir.

Q. Sir, does this chart accurately reflect that your contributions from $1.50 a day were increased to $2.00 a day about the middle of October, 1963? A. I didn't start till '66, sir.

Q. You started in '66? [1,367] A. Yes, sir.

Q. Excuse me. In '66, you came on the first 562 job? A. Yes, sir.

Q. Now, how long were you on the job before you got one of these cards to sign? A. I truthfully couldn't answer that. I imagine a week or so.

Q. Before your first paycheck? A. Yes, sir.

Q. At that time, you began paying $2.00 a day? A. Yes, sir.

Q. You paid $2.00 a day each and every week, or at the rate of $2.00 a day? A. Yes, sir.

Q. That would be $10.00 a week? A. Well, it would vary, sir. I was at the powerhouse at Portage des Sioux, and some weeks you work more than five days, actually an hour's overtime. See, the amount varied.

Q. So it could have been more than $10.00 if you worked more than forty hours? A. It also could be less.

Q. If you worked less than forty hours? A. Yes, sir.

Q. You say you voluntarily paid this amount, $2.00 per [1,368] day, regularly until you became a member? A. Yes, sir.

Q. And on the day you became a member, you decided to voluntarily contribute a lesser amount? A. Yes, sir.

Q. Is there any reason why your voluntary contribution, your voluntary payment reduced the very day you became a member of 562? A. No. It was customary practice that the local men paid a half a dollar a day.

Q. Yes, sir. A. And that is the reason it dropped down to a half dollar.

Q. It's a practice or a custom? A. Well, at the time I became a member, the local men were paying a half dollar a day, so I came under that jurisdiction.

Q. Sir? A. When I became a member of Local 562, the men were paying a half dollar a day, so I came under that jurisdiction.

Q. Were you pleased to pay less than you had been paying? A. This day I was pleased to pay both amounts.

Q. Yes, sir, but were you pleased to pay 50 cents a day rather than $2.00 a day? [1,369] A. Yes, sir.

Q. Why did you, all of a sudden, decide to pay 50 cents a day rather than $2.00 a day?

Mr. Daly: Your Honor, I will object. It is repetitious. I think the witness has already answered that.

The Court: He may answer.

The Witness: Like I said before, it was customary for the local men to pay half a dollar day. When I became a local man you follow the custom.

Q. You were paying what everybody else was paying? A. I volunteered to pay what everybody else was paying.

Q. You were paying the same assessments everybody else was paying? A. No, sir.

Q. You are now? A. In regard to what, sir? The Voluntary Fund or dues?

Q. Dues. A. Dues, yes, sir. That is, my union dues you mean.

Q. These voluntary payments are assessments, aren't they? A. No. sir.

Q. You have been told that, haven't you? A. I know that.

Q. You know that? A. Anything voluntary couldn't be an assessment. That [1,370] is my interpretation of it.

Q. Did you attend this little meeting last Wednesday night out at the hall? A. No, sir. I was sick.

Q. Were you invited to attend a meeting? A. The local members, yes, sir.

Q. You couldn't go? A. No, sir. I didn't attend.

Q. Did anybody tell you to be sure and refer to those as voluntary payments rather than assessments? A. No, sir.

Q. They didn't. Nobody? A. (Indicating no.)

Mr. Riddle: I have nothing further.

Redirect Examination.

By Mr. Daly:

Q. Mr. O'Leary, does your union have a regular union meeting the second Wednesday of every month? A. Yes, sir, except for two months in the summer.

Q. Was last Wednesday the second Wednesday? A. Yes, sir.

Mr. Daly: I have no further questions.

The Court: Anything else? All right. Step down.

(Witness excused.)

[1,371] **HENRY KLINGLE,**

being first duly sworn, testified in behalf of the Defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Henry Klingle.

Q. Where do you live, Mr. Klingle? A. 9911 Fonda Drive.

Q. Where is that located, sir? A. Bellefontaine Neighbors.

Q. Mr. Klingle, are you a member of Local 562? A. Yes, sir.

Q. How long have you been a member? A. Since '51.

Q. 1951? A. Yes, sir.

Q. And where are you now employed, sir? A. Carrier Corporation.

Q. Are you familiar with the Voluntary Fund, sir? A. Yes, sir.

Q. Did you ever sign a Voluntary Fund card? A. Yes, sir.

Q. When did you sign that, sir? [1,372] A. I don't recall exactly.

Q. Did you make some contributions into the Fund after you signed the card? A. Yes.

Q. How did you make those contributions, sir? On a weekly basis or—— A. No; periodically.

Q. Would you explain to us just how you make your payments? A. Three months, or usually when I go down to the hall I usually paid my assessments; three months; every three months; then I would go across to the Voluntary Fund office and contribute.

Q. Would you pay your contribution into the Voluntary Fund office? A. Yes, sir.

Q. And that's in the same building as the Union headquarters are; is that correct, sir? A. In the same building; yes.

Q. Are you still contributing into the Fund? A. No.

Q. How long has it been since you contributed? A. Sometime in '64.

Q. Any reason why you stopped contributing? [1,373] A. Yes. I had some personal obligations that I figured were more important than the Voluntary Fund.

Q. So you stopped contributing to the Fund? A. Yes.

Q. Did you lose your job as a result of that? A. No, sir.

Q. Any repurcussions at all because you stopped contributing to the Fund? A. No, sir.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. You paid weekly and regularly until 1964? Sometime in '64? A. Irregularly. Not regularly. I kept no accurate accounting of what I paid into it, but it wasn't a regular basis.

Q. Were you current at the time you quit? A. No, sir.

Q. Did you owe them some at the time you quit? A. Well, I wasn't paid up. I mean I hadn't paid. Well, I don't know what you mean by "owe".

Q. Yes. Well, were you behind on paying? A. I was behind; yes.

[1,374] Q. About how much behind were you? A. I don't know.

Q. You say you had some hardships? A. Yes, sir; family hardships.

Q. Sir? A. Family obligations.

Q. Medical bills? That sort of thing? A. Yes, sir.

Q. Did you normally pay to your foreman or to the steward on the job? A. No, sir.

Q. Who did you pay to? A. Directly to the Fund; at the office.

Q. Now, when you had these expenses, did you tell anybody down there about your hardship? A. No, sir.

Q. Nobody? A. No, sir.

Q. Not your foreman? A. I don't have a foreman.

Q. Are you a foreman? A. Well, I collect foreman's pay, but I don't have any men under me, or anything like that. I do service work.

Q. Oh, I see. You work by yourself? [1,375] A. Yes, sir.

Q. Do you have your own business? A. No, sir.

Q. What is the name of the company you work for? A. Carrier Corporation.

Q. You mean to tell the Court and jury that you didn't tell anybody down at the Union hall about your hardship? A. No, I didn't.

Q. Did you attend any meetings after that? A. Yes.

Q. How many? A. Oh, maybe five or six special meetings.

Q. Have you paid anything in since your hardship? A. No, sir.

Q. Not a bit? A. No, sir.

Q. You say you are getting foreman's pay? A. Yes, sir.

Q. How long have you been with the Carrier Corporation? A. Since I have been with the Local; '51.

Q. Since 1951? A. Yes, sir.

Q. You are a service man? A. Yes, sir.

[1,376] Q. You are not one of these members that get assigned out of the hall on jobs? A. No, sir.

Q. In fact, I guess you have never been assigned out of the hall on a job? A. Just the one time at the Carrier Corporation, and I stayed with them since then.

Q. 1951? A. Yes, sir.

The Court: Any redirect?

Redirect Examination.

By Mr. London:

Q. Is your pay scale any different, Mr. Klingle, than the gentlemen who are assigned to jobs out of the hall? A. Other than the foremen get.

Q. What is your pay scale, sir? A. $6.10.

Q. Fifty cents an hour over the basic $5.60 journeyman's rate? A. Yes, sir.

The Court: Any recross?

Mr. Riddle: No, Your Honor.

The Court: Step down.

(Witness excused.)

[1,377] **JOSEPH YOUNG,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Would you state your full name, please, sir? A. Joseph Francis Young.

Q. And where do you live? A. 324 Newport, Webster Groves, Missouri.

Q. Do you own your home there? A. Yes, sir.

Q. Mr. Young, are you a member of Pipefitters Local 562? A. Yes, sir, I am.

Q. And how long have you been a member of that Local? A. (Referring to notes) I was initiated 5-18-61.

Q. 1961? A. Yes, sir.

Q. Had you worked under the jurisdiction of the Local previous to that time? A. Yes, sir, I had.

Q. And were you a member of some other local? A. I was originally initiated into Local 562 back in 1949. When I went into the Marine Corps during the Korean War, I dropped my book. When I came back home, it was my intention to go to school rather than to work at the trade. Consequently, [1,378] as a result of financial problems though, I was required to work at the trade. I did work at the trade from 1951 until 1961. I have almost continuously worked at the trade since 1951.

Q. I see. In other words, you worked under the jurisdiction of 562 for about ten years before you were readmitted into the Union? A. That is correct.

Q. Now, sir, are you familiar with the Voluntary Fund? A. Yes, sir, I am.

Q. Have you contributed to the Voluntary Fund? A. Yes, sir.

Q. Have you always contributed? A. There have been times when I did not contribute.

Q. Now, when you didn't contribute did anyone say anything to you about that? A. No, sir.

Q. And you continued working? A. Yes, sir.

Q. Now, sir, were you aware of anything the Fund was spending money for, in addition to politics? A. Yes, sir. You are speaking about the Fund as created in 1963, I believe?

Q. Yes. [1,379] A. If I remember right, the Fund was created for political action, charitable works, educational, and there is something else there that I can't think of right now.

Q. All right, sir. And did you sign one of those Voluntary Cards? A. Yes, sir.

Q. And was this stated in the card? A. Yes, sir.

Q. Now, do you know of anything specifically, in your own mind, that the Fund did in these respects, other than

politics? A. As concerns myself, after our eleven-week strike in 1963, I went to the Director of the Voluntary Fund and asked him if the Fund could help me with my tuition at St. Louis University night school. The Fund consequently did help me.

Q. Did the Fund give you the money for the tuition? A. The Fund gave me $380 for tuition and books at St. Louis University.

Q. Now, Mr. Young, were your contributions to the Fund voluntary? A. Absolutely.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

[1,380] Q. Mr. Young, did you know that the Fund paid Mr. Lawrence Callanan $22,000 a year salary? A. Would you repeat that question?

Q. Do you know that Mr. Lawrence Callanan was paid $22,000 plus per year salary from the proceeds of the Fund? A. I did not know that.

Q. Sir, this $380 that they gave you, was this just a grant or a loan? A. No, sir. This was——

Q. Just a grant? A. This was a grant. This was a gift from the Voluntary Fund.

Q. Yes, sir. Sir, you say that the Fund was educational? A. Yes, sir.

Q. Do you know of any reason why educational activities of the Local, the regular memberships, couldn't be conducted by the Union itself.

Mr. London: Object to that. It is calling for a conclusion; irrelevant.

Mr. Riddle: I am asking him if he knows.

The Court: He may answer.

The Witness: Would you restate that question?

Q. (By Mr. Riddle) With respect to educational activities, do you know of anything in the By-Laws of your local Union that [1,381] prohibit it to engage in educational activities? A. I would have to say that I don't think our By-Laws state anything about education one way or the other.

Q. Do you know of any reason why the Union itself couldn't engage in educational activities?

Mr. Daly: I object to this as calling for speculation on the part of the witness.

Mr. Riddle: I am asking him if he knows, Your Honor.

The Court: All right. He may answer.

The Witness: Would you restate that question, please?

Q. (By Mr. Riddle) Do you know of any reason why the Union itself couldn't engage in educational activities? A. I do not know of any reason why they should not.

Q. Or charitable contributions and activities? A. Do I know of any reason why they could not do that?

Q. Out of its regular dues and assessments? A. In view of all the labor legislation that is on the books, I don't feel that I would be qualified to answer that.

Q. Yes, sir. Sir, do you get an accounting of all the money that is spent by your Union? A. By our Union?

Q. Yes, sir. A. Yes, sir. That is required by law. I know that.

Q. Yes, sir. That is required by law. [1,382] A. (Indicating yes.)

Q. Now, then, do you get an accounting out of this so-called Voluntary Fund? A. Do we get some kind of a statement? The Voluntary Fund spends so much for this, and so much for that.

Q. Yes. A. I have never received such a statement.

Q. Do you know that the reason you don't get that is because that, supposedly, is not covered by law? Have you ever thought about that?

Mr. London: Your Honor, I am going to object.

The Court: I will sustain it as to the form of the question.

Mr. Riddle: I have nothing else to ask.

The Court: Any redirect?

Mr. Randall: No, Your Honor.

The Court: Step down.

(Witness excused.)

WILLIAM LE VAN,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

[1,383] Q. Would you state your name, please? A. William Le Van.

Q. And where do you reside Mr. Le Van? A. 1335 Hialeah Place, Florissant, Missouri.

Q. And do you own your own home out there? A. Yes, I do.

Q. And are you employed at the present time, Mr. Le Van? A. Yes, I am.

Q. For whom are you employed? A. Bechtold Corporation, at Labadie, Missouri.

Q. And what are you doing in that particular job? A. I am a journeyman pipefitter.

Q. And how long have you been a journeyman pipefitter? A. A little over seven years.

Q. How long have you been out there with Bechtold? A. Approximately a month.

Q. And how many pipefitters are on that job at the present time? A. I would estimate around 120, 130.

Q. Where were you employed before you went out to the power plant at Labadie? A. Gateway Ammunition.

Q. And how long were you down there. A. Approximately four months, I believe.

[1,384] Q. Now, are you presently a member of Local 562? A. Yes, I am.

Q. And how long have you been a member of Local 562? A. Approximately seven years.

Q. And did you work under the jurisdiction of Local 562 prior to the time that you became a member? A. Yes, I did.

Q. All right. Now, are you working as a journeyman, or are you a foreman, or general foreman? A. I am working as a journeyman now.

Q. For $5.60 journeyman's pay; is that right? A. No. The scale here, I think, is $5.98.

Q. Is that because it is out of town? A. Yes.

Q. Have you heard of the Voluntary Fund? A. Yes.

Q. Did you sign a Voluntary Fund Contribution card? A. Yes, I did.

Q. Do you presently contribute to the Fund? A. Yes.

Q. Did you contribute to the Voluntary Fund prior to the time that you were a member of Local 562? A. Yes, I did.

Q. All right. Now, are the contributions you are making [1,385] now voluntary? A. Yes, they are.

Q. And they are based on a rate of fifty cents a day; is that correct? A. That's correct.

Q. And I believe if there is overtime, then it is higher than that? A. Yes, sir.

Q. Prior to the time that you were a member of Local 562, you indicated you also contributed; is that right? A. Yes.

Q. Were those contributions voluntary? A. Yes, they were.

Q. Has anyone told you, since you were a member, that you had to make these contributions? A. Never.

Q. Did anyone tell you, prior to the time that you were a member, that you had to make these contributions? A. No.

Q. Now, do you know what the contributions you make are used for? A. Yes, I do.

Q. What is your understanding of what they are used for? A. Well, first, to try to elect people that are favorable [1,386] for labor; for charity, such as United Fund, and, I believe, not too long ago they had a TV telethon which the Voluntary Fund contributed to also; also, defense fund. Let's say, see, at one time I was a steward on a job, and say I had to defend our right to our work, and I ended up getting in a fistcuff match with somebody.

Q. You are just assuming this? A. Yes.

Q. That would be your understanding? A. I would——

Q. When you contribute this money, is it your understanding that this is what it is going to be used for? A. Yes.

Q. And do you make this contribution voluntarily? A. Yes.

Mr. Daly: I have no further questions.

Cross-Examination.

By Mr. Riddle:

Q. You haven't missed any payments? A. Not to my knowledge.

Q. And they have all been voluntary? A. Yes, sir.

Q. You paid all your dues and assessments? A. Yes, sir. That is, three and three-quarters per cent [1,387] of my gross is assessments and dues.

Q. And that's all been voluntary? A. No, sir. That's not voluntary. The dues and assessments are separate from the Voluntary Fund.

Q. You don't pay the dues and assessments voluntarily? A. I pay them—they are deducted from my check on the checkoff system.

Q. You authorize it, don't you? A. Yes, I voted to, but this is something the Voluntary Fund—I give voluntarily because I want to, because as far as I am concerned, this is to my benefit in getting people in the legislature to vote for labor.

Q. Why do you pay your regular dues and assessments? A. To keep my Union going.

Q. For your own benefit? A. Yes.

Q. And you pay that voluntarily, don't you? A. Well, yes, sir. We voted on it at a regular Union meeting, and this is——

Q. Yes, sir. And the payment into this Fund was voted on at a regular Union meeting too, wasn't it? A. No, it wasn't.

Q. Was it voted on? A. Yes, sir, it was.

[1,388] Q. At a meeting? A. Yes, sir.

Q. Was anybody there other than members of 562? A. Yes, sir.

Q. Who? A. Any U. A. member who is working in Local 562's jurisdiction.

Q. Was there any time that that was voted on? A. Yes, sir.

Q. And you voted for it, I guess? A. Yes, sir, I did.

Q. At that meeting, was there any explanation made to you as to why this Fund should be separate and distinct from the regular Union operation? A. Yes, sir. I believe that was on advice of counsel, due to the fact, I think, it is against the federal law to use regular union money, because actually Voluntary Fund is a separate entity from the Union, although 562 members are in great majority of the members of the Voluntary Fund.

Q. Yes, sir. Well, now, is there anything that this Fund can do that your regular Union can't do? A. As I say, I believe it is against federal law, and I believe that is why this case is here right now, that a union or a large corporation may not contribute to the campaign funds [1,389] of any political office seeker.

Q. Yes. And this was set up in order to get around that law?

Mr. London: Your Honor, I am going to object to the form of these questions. Now, it is asking for a conclusion on the part of this witness.

The Court: This is cross-examination. He may answer. Objection will be overruled.

Q. (By Mr. Riddle) Is this your understanding, that was set up to get around that law? A. No, I don't believe it was set up to get around the law. I believe it was set up to help us, and I think this is actually all it is doing.

Q. Sir, you are familiar with your By-Laws, I guess? A. Not as good as I should be.

Q. Well, let me ask you if you are familiar with Section 2.05, which says:

"We recognize that the interests of this labor organization are not limited to matters of organization and col-

lective bargaining, or even to those matters and things additionally set out in Sections 2.01, 2.02, 2.03 and 2.04, but extend to all types of economic, social and political activities, including, but not limited to, activities of a cultural, civic, industrial growth, legislative, political, [1,390] fraternal, educational, charitable, welfare and social nature."

Are you familiar with that provision in your By-Laws? A. I am now; yes, sir.

Q. Well, now, sir, when it was being explained to you the purpose for setting up this fund, was it explained to you why this couldn't be done under your own Union? A. For the simple reason it would be in violation of the law.

Q. For one purpose, and one purpose only, and that was to contribute to a federal candidate; is that what you are told? A. I don't recall exactly what I was told, because I don't have a law degree, and, therefore, I can't——

Q. I am asking you whether you were told that it was set up for the purpose of using money to pay for federal candidates? A. I imagine so.

Q. Yes, sir. Because all of these other activities that appear on this card, the Union could do properly, legitimately, without any problems so far as the By-Laws showed?

Mr. London: May we approach the bench, Your Honor?

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of hearing of the jury:)

Mr. London: I would like to object to this line of questioning. Mr. Riddle has touched upon the matters. It is my understanding that the defendants herein are charged [1,391] with violation of a law that prohibits unions from contributing money to candidates in federal elections.

Now, whether or not they can do charitable, legislative, or other work within the framework of their own union, or whether they do it through a voluntary fund will certainly be totally irrelevant and immaterial to any of the issues in this cause, and I feel that this line of questioning is totally outside of the scope of this indictment, and that it is prejudicial to the interests of the defendants in this case.

I would, therefore, object to this line of questioning, and ask that it be stricken and the jury instructed to disregard it, and a mistrial be declared.

Mr. Daly: Further, he is calling for a legal conclusion from this witness, whether legally they can do these things from the By-Laws. He is not qualified as an expert, he can't give a legal conclusion.

Mr. Riddle: Your Honor, it is cross-examination. This witness said he knows what the Fund was for. He paid into it. He attended some meetings. He was told at these meetings that the purpose of this Fund was to make money available for the election of federal candidates.

Now, the cards that are in evidence, which he pays under, shows that that's for all the other activities that are included in the Constitution and By-Laws that a union can do [1,392] legitimately, can do very properly, and can do in a way that makes them accountable to the membership and to the Department of Labor.

Now, the vital issue in this case is whether or not these defendants entered into a conspiracy for the purpose of violating the federal laws by setting up this bogus fund to receive money in for which they didn't have to account, and for which they could use in payment for federal candidates indirectly what they couldn't specifically do directly, and I think these questions are very relevant to that point.

Mr. London: If I might comment for a moment. Whatever Mr. Riddle's theory is, the point still remains that

whatever was done with any of the money, other than the allegation that he claims that this was a violation of Section 610, or a conspiracy to violate Section 610, whatever else may have been done is not a violation of the federal law. It has no place in the trial.

The Court: Well, the charge is a conspiracy to violate Section 610, and whatever can be elicited to prove the conspiracy is admissible. Now, that goes to that part of it.

Now, Mr. Daly has indicated that he thinks that you are attempting to elicit legal conclusions from this witness.

Mr. Riddle: That is not my intent, most certainly not.

The Court: Well, I must say that I thought some of [1,393] the questions at least headed in that direction. I am not going to preclude you from asking questions in that vein, but I did not think that you should ask him questions that require him to make legal conclusions. All right.

Now, to the extent that—Did you ask for a mistrial?

Mr. London: Yes.

The Court: That will be denied, and the attorney for the Government is directed to direct his questions in such a manner that they do not call for legal conclusions.

Mr. Riddle: All right.

Mr. London: Thank you.

(Thereupon, the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Sir, at this meeting which you are referring to, was an explanation made to you and the others as to why a separate fund should be set up for educational, legislative, charity—— A. I really don't recall the explanation that was given. They outlined what it was supposed to be used for, and we more or less had

a chance to either say yea, nay, or whether we wanted it, didn't want it, until it went to a vote.

Q. At that time, were you a member of 562? A. Yes, I was.

[1,394] Q. You became a member of 562 when? A. Approximately seven years ago.

Q. Seven years ago. You have never seen an accounting of any of the money that went into this Fund? A. No, I don't believe so.

Q. You don't know what's happened to it? A. Oh, yes, I know where quite a bit of it has gone; yes. I believe the Voluntary Fund contributed to a hospital in Cape Girardeau.

Q. On that, as far as you know——

Mr. London: Your Honor, we object to that.

Mr. Riddle: I will withdraw that.

The Court: I don't know—both of you are mumbling. If you have something to say, I wish you'd say it distinctly so that the reporter can get it and I can understand it, as well as the jury. If you are withdrawing the question all right. Is that it?

Mr. Riddle: We will withdraw that question, Your Honor.

The Court: All right.

Q. (By Mr. Riddle) Sir, were you aware that a salary was paid to Mr. Lawrence Callanan at $22,000 a year out of this Fund? A. I didn't know the exact amount, but I knew as Director [1,395] he received some remuneration, because there was quite a few headaches.

Q. Yes, sir. Sir, did you know that $150,000 was spent out of that Fund for a farm up in Pike County? A. I beg to disagree with you also there because I think the farm you are referring to is the recreation area for the

pipefitters, and we also have one right off of the Missouri Bottoms Road, and I believe both of those were paid for out of our Welfare Fund, not out of the Voluntary Fund.

Q. You believe that? A. That is to the best of my knowledge.

Q. Is this what you have been told? A. Yes, sir.

Q. Sir, it is your understanding that the farms up there were bought out of the regular Union Welfare Fund? A. Yes, sir. As far as I know they were.

Q. Did you ever hear of Pipefitters Voluntary Fund, Inc.? A. No, sir, I never have heard of it.

Q. Pipefitters Voluntary Fund, Incorporated? A. No, I haven't.

(Thereupon Government's Exhibits Nos. 217 and 218 were marked by the reporter for the purpose of identification.)

Q. I will show you what's been marked Government's Exhibits 217 and 218. See if you can identify them as being [1,396] copies of checks drawn on the Pipefitters Voluntary Political Fund? A. I would say they were.

Q. They total what? A. It would be $125,000.

Q. Who are they payable to? A. Pipefitters Voluntary Fund, Incorporated.

Q. And you never heard of that transaction? A. No, I hadn't.

Mr. Riddle: I have nothing further from this witness.

Mr. Daly: No redirect, Your Honor.

The Court: I beg your pardon?

Mr. Daly: No redirect.

The Court: You may step down.

(Witness excused.)

RAYMOND W. JENKINS,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Raymond Jenkins.

Q. Where do you live, Mr. Jenkins? A. 7071 Mardel Avenue.

[1,397] Q. Are you a member of Pipefitters Local 562? A. That's right.

Q. How long have you been a member? A. Somewhere in the neighborhood of fifteen years, sixteen, something like that.

Q. Mr. Jenkins, are you familiar with the Voluntary Fund? A. That's right.

Q. Did you sign a card for the Voluntary Fund? A. I did.

Q. Do you recall about when you signed that card, sir? A. No, I can't recall the exact date; somewhere in the neighborhood of '60 or '61, I would say.

Q. After you signed the card, sir, did you make contributions into the Voluntary Fund? A. I did.

Q. Are you making contributions into the Voluntary Fund at the present time? A. I am.

Q. Have you made contributions into the Fund continuously from the time that you signed the card? A. No. There was a period of about one year that I didn't.

Q. Did you work during that year? A. I did.

[1,398] Q. Regularly? A. Very regularly. I was a foreman all the time.

Q. You are a foreman? A. That's right.

The Court: Would you speak into that microphone, please, Mr. Jenkins?

The Witness: I was foreman all the time.

Q. (By Mr. London) And you lost no work as a result of losing a year of contributions; is that correct? A. That's right.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Why did you not pay that one year? A. It was a question that the doctor was wanting to retire me on a case of a heart disease I had. And some of the men brought the subject up what would happen if you didn't pay, and I said, "I will find out," so for one year I didn't pay.

Q. Some of your men brought up the question? A. That's right. Some of the men that was working for me.

Q. Did they ask you, wonder what would happen if you didn't pay? A. That's right.

Q. Did you have a severe illness? [1,399] A. I have had three heart attacks, but I'm still going.

Q. When you decided not to pay, did you talk to someone down at the hall about it? A. No.

Q. Did you talk to anybody about it, other than the men on your job? A. No.

Q. Did the people down at the hall know of your serious illness? A. Well, I suppose they did. They pay hospital and doctor bills for me.

Q. And you dropped off your payments for about a year? A. That's right.

Q. And then resumed? A. That's right.

Q. Are you current now? A. Sir?

Q. Are you current on your payments now? A. That's right.

Mr. Riddle: I have nothing further.

Redirect Examination.

By Mr. London:

Q. Mr. Jenkins, when you say you are current, did you make up that year that you missed? [1,400] A. No, I never did make up that year.

Q. So that year has never been paid? A. That's right. That year has never been paid.

Mr. London: That is all.

The Court: Call your next witness.

(Witness excused.)

ROBERT BRUNE,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Brune, would you state your full name, please, sir? A. Robert Brune.

Q. Sir, where do you live? A. I live in Cape Girardeau.

Q. And are you a member of Cape Girardeau Local 318? A. That's right.

Q. How long have you been a member of that Local, sir? A. Since '46.

Q. And have you worked under the jurisdiction of Local 562? A. Several times.

Q. Well, how long have you worked under their jurisdiction? Please tell us when you have worked under their

jurisdiction. A. Well, I worked from '48. One year off and on, going [1,401] and coming, see.

Q. You have worked off and on since 1948? A. That's correct.

Q. Have you worked under the jurisdiction of any other local during that period? A. Yes.

Q. What other local? A. Kansas City.

Q. Kansas City? A. Yes.

Q. About how much of your time, sir, have you worked under the jurisdiction of 562? A. Well, I say half of the time.

Q. About half of the time? A. (Indicating yes.)

Q. Now, Mr. Brune, do you recall—first of all, I'll ask you this: Are you familiar with Pipefitters Local 562 Voluntary Fund? A. I sure am.

Q. And have you contributed to that Voluntary Fund? A. I sure have.

Q. Have you always contributed to it? A. Since it come, yes.

Q. Yes. And did you sign a Contribution Agreement card? [1,402] A. I sure did.

Q. And have your contributions been voluntary? A. They sure have.

Q. Now, sir, do you remember a meeting of the Fund in 1963? A. I was invited to it, but I never went.

Q. You were invited? A. Yes, sir.

Q. Where were you working at that time? A. Pea Ridge.

Q. And were there other members of Local 318 working on that job? A. There was.

Q. Were all those people invited to this meeting? A. I don't know that.

Q. How were you invited, sir? A. I think the foreman invited me that time.

Q. I see. And you did not attend the meeting? A. I didn't attend that meeting.

Q. Now, following this meeting that we are speaking of, did you then sign a Voluntary Agreement Contribution card? A. I did.

Q. Now, during the years that you have worked under 562's jurisdiction, how have you made your contributions, and to whom [1,403] have you made them? A. Well, I made it to my steward.

Q. Have you always given them to the steward? A. No, I haven't. I give it to a lady in our office down home.

Q. You took them into your own local's office and gave them to a lady? A. That's right.

Q. Do you know what her name was? A. Miss Sarff.

Q. And is that the only way that you have made them? Have you ever mailed any of them in? A. No, I haven't.

Mr. Randall: I see. You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, are you working on any 562 jobs now? A. I am.

Q. Are you still paying $2.00 a day, or $10.00 a—— A. I gave them $2.00 a day. That is what I signed up for.

Q. ——$10.00 a week? A. That's right.

Q. Sir, you also pay your dues down at Cape Girardeau? A. I do.

[1,404] Q. What are you working on now? A. I am working on an order plant at Jackson, Missouri.

Q. Jackson? A. That's right.

Q. How far do you live from Jackson? A. Seven miles.

Q. Seven miles? A. That's right.

Q. Are there some people working on this job at Jackson who are members of 562? A. Yes, sir.

Q. What did they pay to this Fund? A. I don't know.

Q. You don't have the slightest idea? A. No.

Q. Nobody ever told you? A. I never did ask them.

Q. You never did ask them? A. No, never did say anything about it. They never did tell me, and I didn't ask them. Didn't figure it was any of my business.

Q. Who told you that you were to pay $10.00 a week? A. I signed up for that.

Q. Who asked you to sign up for it? [1,405] A. Well, that was your—the meetings there, they said for that. I volunteered myself.

Q. Did you sign up before you started to work on other jobs? A. I signed up when I was working on a job when they make agreements.

Q. Was this before you got paid? A. Before I got paid?

Q. Yes. Did you sign a card before you got paid? A. Yes; when I went on the job.

Q. Yes, sir. How much do you pay into your Cape local? A. I pay a dollar a day. That is an assessment, and five dollars a month. That is an assessment there though; Cape local.

Q. You just voluntarily pay this $10.00? A. That's right.

Q. What do they tell you it is used for? A. Used for, well, welfare and stuff like that; could be used for——

Q. Anything the Union wants to use it for? A. No; for the welfare of the men, of the people.

Q. Anyone ever tell you why you were requested to contribute more into the Fund than the local people did? A. No. It was $2.00. We get as much out of it as they [1,406] were. I am making more money in the St. Louis Local than I am in the Cape Local.

Q. Is that the reason you are willing to pay the $10.00 a week? A. I see where it is they give money to our hos-

pital down there at Cape, both hospitals. I think it is for a good reason myself.

Mr. Riddle: I have nothing else.

The Court: Any redirect?

Mr. Randall: No, Your Honor.

The Court: Step down.

(Witness excused.)

BEN G. MILLER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. State your name, please. Ben G. Miller.

Q. And where do you reside, Mr. Miller? A. Festus, Missouri.

Q. And are you employed at this time, sir? A. No, sir.

Q. What is your status at this time? [1,407] A. I am retired.

Q. And when did you retire? A. July, this last year.

Q. July of 1968? A. Yes.

Q. When you were working, what was your trade or your occupation? A. Pipefitter.

Q. And as such, were you a member of Pipefitters Local 562? A. Yes.

Q. How long have you been a member of that local, Mr. Miller? A. Twenty-six years.

Q. Now, could you give the jury some idea as to what job you worked on while you were a member of that local? A. Well, I worked on Weldon Springs, and Union Electric Powerhouse, and a lot of small jobs.

Q. All right. Now, when you worked and were a member of the Local, did you hold any jobs as foreman, or area foreman, or such as that? A. Yes, sometimes I was foreman.

Q. All right. Now, when you were a member of the Local, before you retired, do you recall the Voluntary Fund, Mr. Miller? A. Before?

[1,408] Q. Yes. A. Sure.

Q. And did you sign a card, a Voluntary Contribution card? A. Yes.

Q. And when you were a member, did you donate to that Fund? A. Yes.

Q. Did you contribute to the Fund? A. Yes.

Q. Did you contribute all the time that you were a member? A. Yes, I always contributed.

Q. You are not contributing anything to the Fund at this time? A. No.

Q. And you are a retired member of 562? A. That's right.

Q. You are not working on any jobs or anything? A. No, sir.

Q. When you were a foreman or a steward, did you ever collect any of the money for the Fund, Mr. Miller? A. No, I didn't.

Q. Whom did you generally pay? A. Well, I personally, I generally paid at the office.

Q. Downtown. You didn't give it to a steward on the job? [1,490] You took it in yourself? A. As a rule, yes, because I was working on a small job most of the time.

Q. Was that donation voluntary, Mr.—— A. Yes.

Mr. Daly: Your witness, Mr. Riddle.

Cross-Examination.

By Mr. Riddle:

Q. You retired in July of this year? A. Yes.

Q. You made your last payment the last week you worked, I guess? A. That, I don't remember.

Q. You paid into this Fund up until the time you retired? A. Yes.

Q. You paid the amount that was fixed, fifty cents a day, or a dollar a day? Whatever it was, you paid it? A. Yes. Whatever the contribution was supposed to be, that's what I paid.

Q. Whatever they decided that the contribution ought to be, why you paid it? A. No. No. We voted on that at the meetings. What we were——

Q. At a union meeting? A. No. It was a special meeting.

Q. Of the Union? A. No, it wasn't a regular union meeting; no.

Mr. Riddle: I have nothing further to ask this man.

The Court: All right. Anything else?

Mr. Daly: No redirect, Your Honor.

The Court: All right. Step down.

(Witness excused.)

JAMES T. MANNING,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. James Manning.

Q. Where do you live, Mr. Manning? A. I live in Affton, Missouri.

Q. And what is your occupation, sir? A. Journeyman pipefitter.

Q. Where are you working at the present time? A. The Weldon Springs Atomic Energy Commission Plant.

Q. Are you a member of Pipefitters Local 562? A. I am.

Q. For how long? [1,411] A. Eight years.

Q. Are you familiar with the Voluntary Fund, sir? A. Yes, I am.

Q. Did you sign a Voluntary Fund card? A. Yes.

Q. Do you contribute to the Fund? A. Yes, I do.

Q. Do you remember contributing regularly? A. Yes.

Q. Let me ask you, Mr. Manning, have you ever attended any meetings of the Fund? A. Yes, I have.

Q. Is that the same as a union meeting? A. No.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. How does it differ from the union meeting? A. Well, they are usually called on separate dates.

Q. By the same people? A. How do you mean?

Q. Well, who calls these meetings of the Fund? A. Well, we'll receive in the mail, usually, a notification of a meeting to be at a certain date, and it is from the [1,412] Fund.

Q. Have you been a member of this Fund for what, eight years? A. No.

Q. Since '63? A. Yes.

Q. Do you have any evidence that you are a member of that Fund? A. No. I have check stubs that possibly I could get hold of.

Q. You don't have a membership card? A. No.

Q. You don't have any receipts for any money you ever paid in? A. Cancelled checks.

Q. Cancelled checks? A. Yes.

Q. It doesn't have any constitution or minutes, or by-laws, this Fund, does it? A. Well, when we have meetings, we are told what is going on.

Q. You are told all that's going on? A. As much as I care to know.

Q. How much do you care to know? [1,413] A. Well, we are told about who we are supporting.

Q. Sir, do you care to know how a million and a half dollars has been spent? A. Certainly.

Q. Have you been told that? A. No. I haven't asked.

Q. Does that mean you don't care to know, or you just haven't gotten around to asking? A. That means I haven't asked.

Q. But you do care to know? A. Yes, I suppose so.

Q. Nobody has ever told you? A. No. Because I haven't asked, probably.

Q. Do you know how much money has been paid into that Fund? A. By myself?

Q. Yes. No. By all of you together? All of the members of the Fund? A. No, because I don't know how many members there are and how much they pay or contribute.

Q. Sir, would you be surprised to know that at least a million and a half dollars has been paid into that Fund?

Mr. Daly: Your Honor, I will object to that. I don't think it is of any interest to the jury whether or not [1,414] they would be surprised or not.

Mr. Nangle: Your Honor, may I make an objection?

The Court: You may make an objection.

Mr. Nangle: Your Honor, it is contrary to the Government's own exhibits, which clearly list $1,230,986.

Mr. Riddle: You are right, but that does not include all of 1968, or '67.

The Court: I think that the inclusion of the words, "Would you be surprised," might be construed to be argumentative. For that reason I would sustain the objection as to the form. Otherwise it would be overruled.

Q. (By Mr. Riddle) Do you know what salaries are paid out of this Fund? A. No.

Q. Do you know what Mr. Callanan's salary out of the Fund has been? A. No, I don't.

Q. Do you know how much has been spent for political activities on the federal level? A. I couldn't say offhand, but from what I read in the paper, it is considerable.

Q. That is the only information you know about that is what you read in the papers? About how much has been spent? A. Yes. I think so.

[1,415] Mr. Riddle: I have nothing further.

The Court: Any redirect?

Redirect Examination.

By Mr. London:

Q. Do you give to the United Fund? A. No, I don't.

Q. Do you give to any charities? A. Church.

Q. Do you get a breakdown from the church how that money is spent, item by item? A. No.

Q. Do you ask for it? A. No, I don't.

Mr. London: That's all.

Recross-Examination.

By Mr. Riddle:

Q. Sir, you mean to tell me you don't get any type of financial statement from your church? A. No. I just—

Q. Ever? A. I just go to church and drop a buck or two in the basket when it comes by. I don't pay them by check.

Q. Do you pay them precisely the same amount each week? A. No.

[1,416] Q. You pay them whatever you just voluntarily want to pay them each week? A. Right.

Mr. Riddle: Nothing else.

The Court: Anything else?

Mr. London: That's all, Your Honor.

The Court: You may be excused.

(Witness excused.)

The Court: We will recess for lunch until a quarter to 2:00. Members of the Jury, bear in mind the admonition I have given you heretofore. Don't read anything. Don't discuss it. Don't form any opinions. Don't read the papers. Quarter to 2:00.

(Thereupon at 12:30 p. m., court was in recess for lunch until 2:00 p.m.)

Friday, September 13, 1968.
Afternoon Session.

ALLEN DEWEESE,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Deweese, would you state your full name, please? A. Allen Deweese.

[1,417] Q. Where do you live, sir? A. At Jackson, Missouri.

Q. Are you a member of Cape Girardeau Local 318? A. Yes, sir.

Q. And have you ever worked under the jurisdiction of Local 562? A. Yes, sir.

Q. How long have you worked under—what period of time? A. I first started in about 1945.

Q. And have you worked under their jurisdiction off and on since 1945? A. Yes, sir.

Q. About how much of your time have you been under the jurisdiction of—— A. I would say about, oh, about a third of the time.

Q. About a third of the time. Now, back in May, 1967, were you working on a 562 job? A. Yes, sir.

Q. And what was your position? A. General foreman.

Q. You were the general foreman for a 562 job? A. Yes, sir.

Q. Are you familiar with the Pipefitters Voluntary Fund? A. Yes, sir.

[1,418] Q. Did you—Let me ask you this: Have you ever attended any meetings of the Voluntary Fund? A. Yes, sir.

Q. Did you make collections for the Voluntary Fund when you were general foreman? A. Yes, sir.

Q. What did you do with those collections, sir? A. I turned them in to the secretary of Local 318 union in Cape Girardeau.

Q. What is the name of that person? A. Miss Sarff.

Q. Did you sign a Voluntary Card? A. Yes, sir.

Q. Have you, yourself, contributed? A. Yes, sir.

Q. Have you always contributed? A. Yes, sir.

Q. Have your contributions been voluntary? A. Yes, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. How long have you been a general foreman, sir? A. I was general foreman for that—I was only general [1,419] foreman for that one job.

Q. All other work you are just a journeyman foreman? A. Yes, sir.

Q. What job are you working on now? A. At the high rise college.

Q. That is a dormitory at State College down at Cape? A. Yes, sir.

Q. Now, is that a 562 job? A. Yes, sir.

Q. Are the 562 people and 318 people both working on that job? A. Yes, sir.

Q. What does it cost you a day to work on that job, sir?

Mr. London: I object to the form of that question, Your Honor.

The Court: He can answer it if he can. The objection will be overruled.

Q. (By Mr. Riddle) What does it cost you a day to work on that job? A. I donate $2.00 a day.

Q. Is it your testimony that it costs you a donation of $2.00 a day? A. Well, I don't know if you call it a cost. I give it to them voluntary.

[1,420] Q. Now, what does it cost a member of 562 to work on that job a day? A. I think 50 cents.

Q. Are there people on this job from Cape Girardeau working side by side with people from St. Louis? A. Yes, sir.

Q. Doing the same work? A. Yes, sir.

Q. Being paid the identical sums of money for their labors? A. Yes, sir.

Q. And the people from Cape who are members of 318 pay $2.00 a day? A. Yes, sir.

Q. And people from St. Louis, or members of the St. Louis union, only pay 50 cents a day? A. Yes, sir.

Q. Sir, you say you make the collections that you have picked up, you took them to the Union hall there in Cape Girardeau, Missouri? A. Yes, sir.

Q. Is this what you fellows, or the amount that you pay in here into the St. Louis Fund, is that referred to by you and your fellow 318 members as doby money? [1,421] A. Well, we call it Voluntary Fund.

Q. Is it referred to also as doby money? A. A doby is slang for Voluntary Fund, or whatever.

Q. Yes. A. You hear that occasionally.

Q. Yes, sir. You say doby is slang for Voluntary Fund, or whatever. You mean—by "whatever" what do you mean? A. Well, I would say in—I think in your dues, or whatever you pay.

Q. Whatever it costs you to work, dues, or whatever, what have you? A. That's what I think.

Q. That is what people refer to as dobies? A. That is what I think.

Q. Well, it is commonly used among the people down there? A. I have heard it.

Q. You say you have attended a meeting here in St. Louis? A. Yes, sir.

Q. When? A. I believe it was in May.

Q. Of this year? A. Yes, sir.

Q. Is that the only meeting you have ever attended here in St. Louis? [1,422] A. Yes, sir.

Q. Where was that held? A. I believe the Electricians hall.

Q. Who presided at that meeting? A. Well, there were several speakers, and, I believe, my opinion, Mr. Callanan.

Q. Mr. Callanan. Were you given a notice of the meeting? A. General foreman.

Q. Told you about the meeting? A. Yes, sir.

Q. Anybody else in Cape come up with you? A. Yes, sir.

Q. Do you remember what was discussed at the meeting? A. Well, there was a vote on the Voluntary Fund.

Q. Did you vote on it? A. Yes, sir.

Q. Secret ballot? A. Yes, sir.

Q. How many other boys came up from Cape on it? A. I don't know exactly. There were several.

Q. At the same time you collect from the St. Louis members at .50 cents a day, you pay—— A. I never collected—let's see. I had one for a short while, and I didn't collect from him, 562, and he was a welder. [1,423] And he was transferred, and then I got another one. They got another one, and they sent theirs in theirself, if I remember right.

Q. Sir, did you ever bring to the attention of your representative down at Cape the disparity in your payments into this Fund, as compared to what the St. Louis members paid? A. No, sir.

Q. Did you ever claim to him that you were paying two bucks a day, and they were just paying fifty cents? A. No, sir. I knew.

Q. You knew before you took the job that that's what it was, didn't you? A. Sure did. I knew why.

Q. Why there was a difference? A. Um hum.

Q. What is the difference? A. Their difference is that they have, they pay their dues or whatever. It amounted to, was more than what ours did, was $2.00.

Q. In other words, what their people paid into their local was more than what you people paid into your local? A. Paid into their local.

Q. Yes. A. 562 local.

[1,424] Q. And this $2.00 you paid in was for the purpose of equalizing that? A. What I am trying to say is that our Voluntary Fund was less than what they had to pay in with their dues and their Voluntary Fund. In other words, they made more than we did with our two dollars.

Q. And the increase in yours over there was to equalize that? A. Well, I don't know about that.

Q. Well, was this the explanation given to you? A. No.

Q. You just know that? A. Well, I know that; yes. I mean it wasn't explained to me in that way.

Mr. Riddle: I have nothing further.

Redirect Examination.

By Mr. Randall:

Q. Sir, when you came up to this meeting in May, how did you get up to St. Louis? A. Me and a friend, buddy, drove.

Q. Drove up in a car? A. Yes.

Mr. Randall: That's all.

The Court: Anything else, Mr. Riddle?

[1,425] Mr. Riddle: I have nothing else.

The Court: You may be excused.

(Witness excused.)

KENNETH CUNNINGHAM,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? A. Kenneth Cunningham.

Q. And where do you reside, Mr. Cunningham? A. In Cape Girardeau.

Q. And what is your business or occupation? A. I'm a plumber pipefitter.

Q. A plumber pipefitter? A. Yes, sir.

Q. And are you a member of a union? A. Yes, sir.

Q. What union do you belong to? A. Local 318.

Q. And where is that located? A. In Cape.

Q. Now, in the past have you worked under the jurisdiction of Local 562? [1,426] A. Yes, I have.

Q. On how many occasions have you worked under 562's jurisdiction? A. I don't know; several.

Q. More than once? A. Yes, sir.

Q. When is the last time you worked on a job that was under the jurisdiction of Local 562? A. March, I think it was. February or March.

Q. February or March of this year. Now, are you familiar with Voluntary Fund Local 562 has? A. Yes, sir.

Q. And those times that you were working under Local 562, did you contribute to that Voluntary Fund? A. Yes, sir.

Q. How much did you contribute? A. Two dollars per day.

Q. Two dollars per day. Now, when you were working under Local 562; whose rate of pay would you draw? A. 562's rate.

Q. What is the 318 rate of pay for a plumber pipefitter? A. $5.91.

Q. That is 318? A. Yes, sir.

[1,427] Q. What is 562? A. $6.16, I think it is.

Q. And does the Local 318 have a pension plan? A. No, sir, we haven't.

Q. Do you get anything in the way of fringe benefits on your pension plan in 318? A. The only fringe benefits we have is health and welfare fund.

Q. How much is that? A. All together it is 27 cents.

Q. Twenty-seven cents per hour? A. Yes, sir.

Q. Now, when you work under 562's jurisdiction, do you qualify under this pension plan? A. Yes, sir.

Q. And what is the rate of pay on that? Do you know? A. About two dollars seventeen, I think.

Q. So every hour you work under 562's jurisdiction, you are getting $2.17 put in for you; is that right? A. Yes, sir.

Q. Whereas when you are working under 318, there would be a 20-cent contribution? A. Twenty-seven.

Q. Over a week's time, what is the average difference in [1,428] your paycheck between working under the jurisdiction of 562 and working under the jurisdiction of your local at 318? A. Now, I think it is about $30.00.

Q. About $30.00 a week. So if you can find a job under 562's jurisdiction, you could take home about $30.00 more per week; is that right? A. Yes, sir.

Q. And you indicated that you have paid into the Voluntary Fund; is this correct? A. Yes, sir.

Q. At the rate of $2.00 a day. Did you pay that voluntarily, Mr. Cunningham? A. Yes, sir.

Mr. Daly: Your Witness, Mr. Riddle.

Cross-Examination.

By Mr. Riddle:

Q. You say under a St. Louis job you could take home $30.00 more per week? A. Approximately.

Q. Plus the $20.00 that you pay into this Fund here.

Mr. Daly: I don't believe there is any evidence that he paid $20.00 into the Fund.

Q. (By Mr. Riddle) Do you pay $10.00 a week into the Fund? [1,429] A. I pay $2.00 per day.

Q. So it is $30.00 a week you would get more out of the St. Louis job? A. (Iindicating yes.)

Q. And you pay $10.00 into the Fund each week? A. Yes, sir.

Q. Sir, does that $10.00 a week figure out it costs you $2.00 a day to work on their job? A. No, sir. We have approximately $78.00 in fringe benefits per week that we don't have in our local.

Q. All right, sir. But this $2.00 a day that you pay in to them, now you consider that a cost of working on that job? A. No, sir.

Q. It is a cost to you, isn't it? A. No, sir.

Q. You pay it, don't you? A. It is a donation.

Q. You don't have the money when you go home, do you? A. No, sir.

Q. Sir, you know what a doby is, don't you? A. I've heard the term.

Q. What is a doby supposed to be? What is a doby by your understanding? [1,430] A. I have just heard the term, I don't know what it means.

Q. I see. Your fellows down there use it? A. Not so much in our Local.

Q. All right, sir. Do you know what the boys from St. Louis pay on the jobs into this Fund? A. I haven't any idea.

Q. You don't have the slightest idea? A. No.

Mr. Riddle: I have nothing further.

The Court: All right. Step down.

(Witness excused.)

ARTHUR GERMER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Arthur Germer.

Q. Where do you live, Mr. Germer? A. 1523 Melrose.

Q. And are you employed, sir? A. No, sir.

Q. You are retired? [1,431] A. Yes, sir.

Q. What was your occupation, sir, before you retired? A. Steamfitter.

Q. Were you a member of Pipefitters Local 562? A. Yes, sir.

Q. While you were a member, sir, were you familiar with the Voluntary Fund? A. Yes.

Q. Did you sign a Voluntary Fund card? A. Yes.

Q. Did you make contributions to the Fund? A. Did I! Not all the time.

Q. You contributed sometimes, and not at other times? A. Yes, sir.

Q. Did you work at the times you were contributing? A. Yes.

Q. Did you work at the times you weren't contributing? A. Yes, sir.

Q. Any distinction in your work as to whether or not you contributed? A. No.

Q. You worked both times? A. Yes.

Q. Did you ever attend any of the Fund meetings, [1,432] Mr. Gerner? A. I attended one, yes, I think, that I know of.

Mr. London: That is all. You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Where was that meeting? A. It was, I think, the Electricians hall.

Q. Who presided at it? A. Well, the regular officials.

Q. Of the Union? A. Yes.

Mr. Riddle: That's all.

The Court: All right. Step down.

(Witness excused.)

GERALD PIERCE MASON,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Mason, would you state your full name, please? A. Gerald Pierce Mason.

Q. Where do you live? A. Jackson, Missouri.

Q. Are you a member of Local 318 Pipefitters of Cape Girardeau? [1,433] A. I am.

Q. Have you ever worked under the jurisdiction of Local 562? A. I have.

Q. And when did you first do that? A. 1953.

Q. And since 1953, have you worked on several occasions under the jurisdiction of 562? A. I have.

Q. About how much of your time do you spend working under the jurisdiction of 562? A. I'd say about fifty per cent of the time. It might be a little more.

Q. Are you familiar with the Voluntary Fund of Local 562? A. Yes, sir, I am.

Q. Have you contributed to it? A. Yes, sir.

Q. Have your contributions been voluntary? A. Yes, sir.

Q. Have you ever attended any of the meetings of the Fund? A. Yes, sir.

Q. Did you take some of your contributions to the office of Local 318? A. Yes, sir.

[1,434] Q. And who did you give them to there? A. Miss Sarff.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. What did it cost you a day to work on a 562 job? A. Well, I wouldn't say it cost me anything. I volunteered to donate $2.00 a day.

Q. Every day? A. Yes, sir.

Q. On every job? A. Yes, sir. Since it's been $2.00 a day, I do.

Q. Before that you paid the $1.00 a day. A dollar fifty cents a day, I believe it was. A. I guess so, because I worked before it was $2.00 a day.

Q. Have you always paid just whatever they said it was? A. They didn't tell me what it was. It was just

whatever the members in the Local I was in was donating to the Voluntary Fund.

Q. They didn't—by "they" who do you mean, they didn't tell you what to pay? A. Anyplace I worked. Nobody told me exactly what to pay.

Q. You always paid what everybody else paid? A. That's right.

[1,435] Q. Plus your own dues to your own Local? A. That's right.

Q. Did you ever try to work on one of their jobs without paying this? A. No, sir.

Mr. Riddle: I have nothing else.

Mr. Randall: I have one question.

Redirect Examination.

By Mr. Randall:

Q. Sir, did you receive a vacation check last year from the Welfare Fund of 562? A. Yes, I did.

Q. How much did you get? A. It was six hundred dollars before any tax was deducted.

Q. Did you receive any vacation check from your own Local? A. No, sir.

Mr. Randall: That's all.

The Court: Step down.

(Witness excused.)

LLOYD KIDD,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

[1,436] Q. Would you state your name for the Court and jury, sir? A. Lloyd Kidd.

Q. And where do you live, Mr. Kidd? A. Jackson, Missouri.

Q. And what is your business or occupation? A. Pipefitter.

Q. And do you belong to a union, sir. A. Yes.

Q. What local do you belong to? A. 318.

Q. Where is that local located? A. Cape Girardeau, Missouri.

Q. Now, when you sometimes work as a pipefitter, you are under the jurisdiction of Local 562? A. Yes.

Q. How long have you been a pipefitter? A. 1952.

Q. And that is about sixteen years? A. Yes.

Q. In that time, how much have you worked under 562's jurisdiction? A. Most of the time. Many times.

Q. Not always? In other words, many of the jobs were actually under 562's jurisdiction rather than your own local [1,437] union, is that right? A. Yes, sir.

Q. Now, during this time that you worked under 562's jurisdiction, did you hear of the Voluntary Fund? A. Voluntary Fund?

Q. Yes. A. Yes, sir.

Q. And did you make contributions to that Voluntary Fund? A. Yes, sir.

Q. What would your contributions ordinarily be, Mr. Kidd? A. To the Voluntary Fund?

Q. Yes, sir. A. At the present, $2.00 a day.

Q. And was it one time more, or one time less than that? A. It was one time—that, I don't remember.

Q. All right. Now, when you work under 562's jurisdiction, what scale do you get paid? A. At the present?

Q. Yes, sir. A. $6.16 per hour.

Q. What is the scale for your own local? A. At the present—it depends on area—$4.91, I believe.

Q. $4.91. Over a week's work, how much difference [1,438] would it make in your paycheck to you if you were working under 562 jurisdiction or under your own Local 318's jurisdiction? A. Ordinarily, in the past it has been from thirty to forty dollars per week.

Q. Have you also worked other than just as a journeyman on 562's jobs? A. I have been foreman, general foreman.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, your testimony is that you get from thirty to forty dollars more per week when you are working on a St. Louis job? A. Yes. Approximately.

Q. Is that why you are willing to pay this $10.00 a week into the Fund? A. Yes.

Q. And you wouldn't be willing to pay this into the Fund, except for that greater pay, would you? A. I wouldn't say that. I'm a pipefitter.

Q. You mean if you could get the same money on a Cape Girardeau job as you can get on a St. Louis job, that you would still want to pay an additional $10.00 per week? A. No.

[1,439] Q. You pay the $10.00 a week for the right to work on their jobs, don't you? A. No.

Q. What do you pay it for then? A. I pay it because I think it is a good thing.

Q. For you? A. It's a good thing for the community.

Q. You think it is a good thing for you? A. For me, when it is used in my own community; yes.

Q. Sir, do you think it would be a good thing for you if the price was the same for both locals? A. Rephrase that question. What I mean; bring that up again. A good thing for me?

Q. Yes, sir. Do you think it would be to your interest to pay the $10.00 into that Fund if you can make no more money off of a St. Louis job than you could on your own job? A. Well, I don't know about that.

Q. You wouldn't want to pay it, would you? A. Yes. If it was used in my community.

Q. Sir, is this money used in your community? A. Some of it goes for contributions, I understand, for hospitals.

Q. Do you know how much? A. Not the exact amount.

[1,440] Q. How do you know some of it has been used in your community? A. From the newspapers.

Q. Nobody in the St. Louis Local 562 told you that, did they? A. No.

Q. Do you know what else it is being used for? A. Other than it is a voluntary donation to be used for whatever they see fit.

Q. And sir, you are just willing to pay it every week? A. Yes, sir.

Q. Except if they were paying the same thing as your Cape Girardeau Local, you'd have some doubts about it?

Mr. Daly: That assumes something not in evidence.

The Court: Well, he is asking him a question. It is cross-examination.

The Witness: It is to my interest to pay the voluntary donation, because the wages are better under the St. Louis scale than they are in the Cape Girardeau scale.

Q. (By Mr. Riddle) Yes, sir. And it is a good deal for you to pay $10.00 a week in order to get thirty to forty dollars more pay a week out of that job? A. Yes.

Q. That's the type of deal that you are saying is better [1,441] for you? A. Yes.

Q. And, except for that, you wouldn't be voluntarily paying anything, would you? A. No.

Mr. Riddle: Thank you.

Mr. Daly: No further questions.

The Court: Step down.

(Witness excused.)

KENNETH ELLISON,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Kenneth Ellison.

Q. Where do you live, Mr. Ellison? A. Sikeston, Missouri.

Q. Mr. Ellison, are you a member of Local 318 out of Cape Girardeau? A. Yes.

Q. Have you had occasion, sir, to work on some jobs under the jurisdiction of Local 562? A. I have.

[1,442] Q. Are you familiar, sir, with the Voluntary Fund? A. I am.

Q. Have you signed a card under the Voluntary Fund? A. Yes, I have.

Q. Have you contributed to the Voluntary Fund? A. Yes, I have.

Q. Who have you paid your money to, Mr. Ellison? A. I have paid to Mrs. Sarff at our office in Cape.

Q. Does she come around to you to collect this money? A. No, she does not.

Q. Does she call you and tell you to bring the money in? A. No, she does not.

Q. How does it come to pass that she gets the money? A. This became a practice when the men were changing jobs, that they would not be in contact with a 562 steward, so in order for them to get their money to the Fund without making a trip to St. Louis themselves, she would pass it on to a steward.

Q. And the men would bring it in to her? A. That's right.

Q. What is your position now, Mr. Ellison? A. At the present time?

Q. Yes, sir. A. I am a plumber foreman, 318.

Q. What job are you working on? [1,443] A. Pixco School at the moment. It is a remodeling job.

Q. Have you ever held any job higher than the job you are now holding? A. I have.

Q. What job would that be? A. 562, general foreman.

Q. What job was that on? A. The last one was Southeast Elementary School at Sikeston.

Q. What was your wage rate as general foreman for 562? A. $6.93 an hour, plus $70.00 a week subsistence pay.

Q. If you had been holding the same job under a 318 jurisdiction, what would have been your pay, if you know? A. $6.71 per hour.

318 job? What do they amount to? A. None. Health and

Q. How about your welfare benefits per hour under a welfare plan, hospitalization insurance.

Q. How much is that an hour? A. I don't know.

Q. Does the figure twenty-seven cents sound familiar to you? A. I am not familiar with it.

Q. Do you know what it is here under a 562 job? [1,444] A. No, I don't.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, tell us why you retain your membership in the Cape Girardeau local. A. Why? Because it is close to my home, and I don't have to travel.

Q. If you were a member in that local, you wouldn't have to pay this $10.00 a week doby, would you? A. I don't have to pay it anyway.

Q. You don't have to pay it? A. No, I don't.

Q. Are you sure of that? A. Positive.

Q. Have you ever tried not to pay it? A. No, I haven't.

Q. Why haven't you tried not to pay it? A. The occasion didn't arise.

Q. How many weeks have you paid it? A. That would be hard to figure. It is something like four months all told.

Q. Four months all told? A. Yes.

[1,445] Q. You haven't tried not to pay it at all? A. No, I haven't.

Mr. Riddle: I have nothing further to ask this witness.

Mr. London: Nothing further.

The Court: You may step down. Go out that door.

(Witness excused.)

FLOYD HAAS,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Haas, would you state your name, please, sir? A. Floyd Haas.

Q. Where do you live? A. Poplar Bluff.

Q. Are you a member of Cape Girardeau Pipefitters Local 318? A. Yes, sir.

Q. And have you worked under the jurisdiction of St. Louis Local 562? A. Yes, sir.

Q. When did you first work under their jurisdiction? A. About 19 and 44.

Q. And have you, on numerous occasions, worked under [1,446] their jurisdiction then? A. Yes, sir.

Q. About how much of your time do you spend working under the jurisdiction of 562? A. I'd say about a fifth.

Q. About a fifth of your time? A. Yes.

Q. Are you familiar with the Voluntary Fund of Local 562? A. Yes, sir.

Q. Did you sign a contribution card? A. Yes, sir.

Q. And have you contributed to that Fund? A. Yes, sir.

Q. Were your contributions voluntary? A. Yes, sir.

Q. And who did you make the contributions to? the person? A. Usually the job steward.

Q. Did you ever make any of them at your Local's office? A. Yes, sir.

Q. To whom? A. One occasion, the steward was off on sick leave, and I did, on one occasion.

Mr. Randall: You may inquire.

[1,447] **Cross-Examination.**

By Mr. Riddle:

Q. Sir, you pay this $10.00 a week into the St. Louis Fund? A. Yes, sir.

Q. When you work on the Cape Girardeau job you don't pay that? A. No, sir. Well, if I am working for 562.

Q. You only pay it when you work on one of their jobs? A. That's right.

Q. Sir, do you make more money on a 562 job than you do on a 318 job? A. Yes, sir.

Q. Is this why you are agreeable to paying the $10.00 a week? A. No, sir.

Q. Suppose you made the same on a St. Louis job as you did on a Cape job? Would you pay it? A. I'd be willing; I would; yes.

Q. You'd still pay the $10.00? A. Yes, sir. That's right.

Q. Each and every week? A. Every week. I think its a good thing. It is just like donating to my church, or anything.

[1,448] Q. You have never donated to this good thing, except for each and every day you worked, did you? A. Well, yes, I have.

Q. You put money into the Fund? A. (Indicating yes.) Some days that I didn't work, yes, sir.

Q. Was that to catch up on back payments? A. No, not necessarily.

Q. You mean you paid into the Fund on days—— A. I have. That I wouldn't be there.

Q. What? A. Days I didn't work for some reason, that I wasn't there.

Q. $2.00? A. That's right.

Q. What about on days you worked on a Cape Girardeau job? Did you pay then? A. If it is under their jurisdiction.

Q. On a Cape job under their jurisdiction? A. Our local doesn't have the setup on that.

Q. You boys down in your local, you are independent of the St. Louis union, aren't you? A. Yes, sir.

Q. It is a pretty good thing for the St. Louis group. [1,449] I am wondering if you ever made an effort to get the same thing going down at Cape? A. We may.

Q. You may? A. We may.

Mr. Riddle: That's all.

Redirect Examination.

By Mr. Randall:

Q. Sir, did you receive a vacation check from the Welfare Fund of Local 562 last year? A. No, sir.

Mr. Randall: You did not. All right. That's all.

The Court: Anything else?

Mr. Riddle: No.

The Court: You may go out that door. Call the next witness.

(Witness excused.)

WILLIAM E. MABRY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. State your name, please. A. William E. Mabry.

[1,450] Q. Where do you live, Mr. Mabry? A. I live, at the present time I live in Maplewood.

Q. Is that Maplewood, Missouri? A. Yes, sir.

Q. And where is your home? A. Cape Girardeau, originally.

Q. What is your occupation? A. Steamfitter.

Q. And do you belong to a union, Mr. Mabry? A. Yes, sir.

Q. What local do you belong to? A. Local 318.

Q. How many members do you have in Local 318, Mr. Mabry? Would you know? A. No, sir, I wouldn't actually know the exact amount.

Q. Since you have been a member—How long have you been a member of 318? A. I have been a member a little over five years.

Q. And during that time, have you always worked as a pipefitter? A. We have a combination local there, and I work with the plumbers and pipefitters; yes, sir.

Q. And some of that time have you worked under 562's jurisdiction? [1,451] A. Yes, sir.

Q. About how much of that time? Do you know? A. I'd say approximately three years.

Q. About three years. About three years of the five? A. Yes, sir.

Q. Now, is this a common occurrence that 318 men work on 562 jobs? A. Well, our local is so small, and now most of our work down in that area is plumbing work, and we depend on these bigger locals, you know, or other locals to work out of, you know.

Q. In other words, if you didn't work under 562's jurisdiction, a lot of your local members would be out of work, wouldn't they? A. Well, I couldn't very well say that. You know, you can go other places and work now.

Q. There is not enough work in the Cape Girardeau area for all the 318 members thought; is that right? A. Not usually, they are not.

Q. In other words, they can come work under 562, or they can go somewhere else? A. Yes, sir.

Q. Pipelining for 789 or 201, or something like that? A. Yes, sir.

[1,452] Q. During the time you worked under 562's jurisdiction, have you donated to their Voluntary Fund? A. Yes, sir.

Q. What donation do you make to that Voluntary Fund, Mr. Mabry? A. I donate $2.00 per day.

Q. Do you donate this voluntarily? A. Yes, sir.

Q. Has anybody told you you had to donate it? A. No, sir, never have.

Mr. Daly: Your witness.

Cross-Examination

By Mr. Riddle:

Q. Mr. Mabry, where are you working today? A. I am working at St. Charles, Missouri, for Gross Engineering.

Q. Do you room here in St. Louis now? A. I have an apartment in Maplewood, Missouri.

Q. And you are paying $10.00 a week into this Fund? A. I am donating $10.00 a week to this Fund; yes, sir.

Q. You have donated it every week that you have been working on the jobs too, haven't you? A. Yes, sir.

Q. That is $40.00 a month? [1,453] A. Yes, sir.

Q. How old a man are you? A. I am twenty-six.

Q. Would you rather work on a St. Louis job than a Cape Girardeau job? A. Well, yes, I have more benefits. I have hospitalization, welfare and retirement, and I make more money, usually.

Q. That is why you are willing to pay in the $10.00— A. No, sir.

Q. ——voluntarily? A. No. I think this Voluntary Fund is a good thing for members, and I think that the money they use is used wisely.

Q. Sir, you say it's been used wisely. Have you been told how it's been used? A. Well, I've seen how some of it has been used, like the hospital down at Cape Girardeau. And I understand, there have been young men tell me that it's been used to send them to college, and different ways of that sort. I think that's pretty wisely.

Q. What about a twenty-two thousand dollar a year salary for Mr. Callanan? A. Well, I wouldn't have his job myself.

Q. You think that is—— [1,454] A. He stays up 2:00, 3:00 o'clock in the morning finding jobs for guys, and things like that.

Q. What about a payment to him of a hundred thousand dollars or so?

Mr. Daly: I will object to this; ask it be stricken, the jury instructed to disregard it; a mistrial be declared.

The Court: No. Request for a mistrial will be denied.

Mr. Daly: May we make a record on this, Your Honor?

The Court: Sure, you can make a record.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. Daly Mr. Riddle asked the question, "How about a payment of a hundred thousand dollars to Mr. Callanan?"

This is entirely outside of the scope of the evidence. There is no evidence that he ever got any kind of money like this from the Voluntary Fund. There is no evidence of any payment of a hundred thousand dollars to anybody particular, and all of the Voluntary Fund checks are in evidence.

I think this is very highly prejudicial to not only Mr. Callanan, but to all of the defendants who are charged with conspiring as to this Voluntary Fund, and, therefore, ask that that question be stricken, that the jury be instructed to disregard it, and a mistrial be declared.

Mr. London: May I add to Mr. Daly's objection the [1,455] fact on two previous occasions Mr. Riddle has asked questions as to the amount relating to the Gift Fund, and on both occasions, to my knowledge, the Court has sustained the defense objections to those questions and instructed Mr. Riddle not to go into the area of the amount of the Gift Fund, and now he has done it by means of a question of this witness, in violation of what I understood to be the Court's previous rulings on two previous occasions.

The Court: The situation is substantially different than it was in the other. I do think, however, that you should have laid a different foundation for the basis of your interrogation, in view of the witness's responses to other questions.

The request for a mistrial will be denied. I am going to strike the question and tell the jury to disregard it, but I am not going to prevent you from laying a foundation for asking such a question.

Mr. London: I am sure the record reflects this, Your Honor, because we have previously objected on the grounds of immaterial and irrelevant, but I want to add that also to our objection.

The Court: It will be the same ruling; be overruled.

(Thereupon the trial was resumed before the jury as follows:)

[1,456] The Court: The jury will disregard—Do you understand what I said about my ruling, Mr. Riddle?

(Thereupon, the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury.)

Mr. Riddle: Yes, but it wasn't clear to me about the foundation. Of course, it is up to me to know how to lay the foundation, but I thought I had laid the foundation. I didn't want to——

The Court: I don't think you have.

Mr. Riddle: I am reluctant to——

The Court: He's been in this for five years.

(Thereupon, the trial was resumed before the jury as follows:)

Q. (By Mr. Riddle) Sir, you say you have been paying into this Fund for a period of five years? A. No, sir. Just while I have been working out of this local.

Q. And that's been for how long? A. Approximately three years.

Q. Approximately three years. That would mean that you began paying into it about 19 and 65, the latter part of 1965? A. I wouldn't say for sure, but it could be very close.

Q. You haven't deviated from the $10.00 a week, unless [1,457] you had overtime, or worked a short week? A. Well, when I work eight hours, I pay $2.00 a day.

Q. You haven't deviated? A. No, sir.

Q. Sir, what about the period of time during the month of July and August of 19 and 66?

Mr. London: If the Court please, we will renew the objection made at the bench, and also add that this is beyond the scope of the direct examination.

The Court: Well, I don't know that the objection made at the bench was pertinent. As far as the other one, they will be noted, and the objection will be overruled.

Q. (By Mr. Riddle) How about 1966, during the period of time June, July and August? A. What about them?

Q. Yes. Do you remember paying into a fund at that time? A. Yes, sir, I sure do.

Q. What fund were you paying into at that time?

Mr. Daly: We object to that, Your Honor; ask the question be stricken, jury instructed to disregard it, and a mistrial be declared.

The Court: Be denied in all counts.

The Witness: Well, I really couldn't say, sir. That's been two years ago, you know. That's quite a while back.

[1,458] Q. We will refresh your recollection. Do you remember paying into the Callanan Gift Fund?

Mr. Daly: I object to that, Your Honor; ask the question be stricken, the jury instructed to disregard it, and a mistrial be declared.

The Court: Denied in all counts.

The Witness: Yes, sir, I believe I did sign a card to that effect when I was on the job.

Q. (By Mr. Riddle) Did you pay $10.00, or $2.00 a day into that Fund also? A. Yes, sir.

Q. And what were people in the St. Louis union, the St. Louis local, paying during that same period of time into the Callanan Gift Fund per day?

Mr. London: May we renew our objection to this entire line of questioning?

The Court: The objection will go to anything in relation to the period of—what is it? June, July and August of '66?

Mr. Riddle: Yes, thereabouts.

The Court: All right. Be overruled.

Q. Do you know the amount that the St. Louis local members were paying into Mr. Callanan's Gift Fund? A. No, sir, I don't have. I don't keep track of that, sir.

[1,459] Q. Do you feel like you ought to pay more into Mr. Callanan's Gift Fund per day than the St. Louis members should pay? A. Well, I wouldn't know how to answer that, really.

Q. Let me be more specific. Do you think you should pay $10.00; or $2.00 per day, rather, and the St. Louis members only pay 50 cents a day into Mr. Callanan's Gift Fund?

Mr. London: I object to the form of the question as calling for a conclusion of the witness.

The Court: No. He may answer.

The Witness: Well, I don't know. I don't actually know what kind of dues they have, plus the Voluntary Fund, see. So I'm really not up to date on that, see.

Q. Are you saying that the amount that you voluntarily contribute then is, in your opinion, related to the amount of dues and assessments that they otherwise pay? A. No, not exactly. This that I'm paying is strictly voluntary, see.

Q. Yes. A. The way I understand this, this is to help the body of our men, see.

Q. Yes, sir. In that connection, I am asking you now, if you would answer it for the jury, if you think you should have been paying $2.00 per day into Mr. Callanan's Gift Fund [1,460] at the same time a member of the St. Louis local was paying 50 cents? A. Well, I must have thought so. I accepted to sign the card, so I guess you might say I accepted it.

Q. You accepted it? A. If I hadn't been for it, I wouldn't have signed the card, see. I wouldn't have been obligating myself, see.

Q. Yes, sir. You did sign the card? A. Yes, sir.

Q. At the time you signed the card, did you know that the St. Louis people were only paying 50 cents a day? A. No, sir. Like I told you, I don't keep up with their, you know, records.

Q. With their dues, or assessments, or voluntary contributions either? A. No, sir.

Mr. Riddle: All right. I have nothing further to ask this witness.

Mr. Daly: Nothing further.

The Court: All right. You may step down. Call your next witness.

(Witness excused.)

The Court: Is this the C. P. A.?

Mr. Nangle: Yes, Your Honor.

[1,461] The Court: Come up, Mr. Riddle and Mr. Nangle.

(Thereupon, a colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury and the reporter.)

The Court: Members of the Jury, we are going to have our afternoon recess. I want you to bear in mind the admonition I have given you heretofore. All right.

(Following a brief recess, the further following proceedings were had before the jury:)

[1,462] **CARROLL C. SHELTON,**
being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Nangle:

Q. Please state your name. A. Carroll C. Shelton.

Q. What is your address, Mr. Shelton? A. 656 East Jefferson, Kirkwood.

Q. What is your profession, Mr. Shelton? A. I am a Certified Public Accountant.

Q. Do you practice accounting in a firm or association, Mr. Shelton? A. I have two partners. We have a firm.

Q. What is the name of your firm? A. Shelton & Von Cloedt.

Q. Would you please tell the court and jury, Mr. Shelton, your education and experience? A. I have a degree in business. I have been in public accounting since 1929, practicing general accounting in the City of St. Louis. I have also taught accounting in night classes.

Q. And do you belong to any professional societies or associations, Mr. Shelton? A. I belong to the American Institute of Certified [1,463] Public Accountants, and Missouri Society of Certified Public Accountants.

Q. Mr. Shelton, how long have you been a Certified Public Accountant? A. Since 1935.

Q. Mr. Shelton, are you familiar with the Pipefitters Voluntary Political, Educational, Legislative, Charity & Defense Fund? A. I am.

Q. Would you tell the Court and jury if you recall when you were first consulted with reference to the records of that Fund? A. I believe it was possibly 1964. I was asked by you to look at their records and to suggest

any possible changes, or such other items that might be desirable in the maintenance of the records.

Q. And was Mrs. Stieferman present at this time. A. Yes.

Q. Mrs. Stieferman was keeping the records at that time? A. That is right.

Q. Did you make any suggestions to Mrs. Stieferman and myself concerning the keeping of these records at that time, Mr. Shelton? A. I did.

[1,464] Q. Would you tell us, please, what recommendation you made, if you recall? A. I inspected the records as they were then being kept. I suggested that the cash be recorded by monthly collections. The method which was being used at the time consisted of a series of postings of the individual amounts collected on individual collection records for each contributor. Totals of these were then accumulated for postings on accumulated total collections, total of the collections. The volume of these postings was very tremendous. I inquired as to whether there was any particular necessity, and it was suggested that there was not; that the tremendous volume of work and with the human errors of posting, and then having to check back continuously to make these corrections would seem to be useless. The totals that were collected were totaled on summary sheets, and by proving out those sheets and proving the totals, it was somewhat easy to make a single entry for the total funds, which was supported by the daily collection sheets, the weekly collection sheets. We also—let's see. I think that was one of the main things we talked about.

We also talked about, at that time, the necessity for filing reports of amounts paid to individuals for services, the necessity for filing forms with the Government in order to comply with the law.

[1,465] Q. Did you confer with anyone at any later time about these records, Mr. Shelton? A. Yes. I conferred

with you, and again with Miss Stieferman, and we were concerned primarily with the adequacy of maintaining the proper supporting invoices and paid bills, and such, to support disbursements. We also again reviewed at that time some of the requirements for filing wage reports, and whatnot, which all wage earners must have reported.

Q. Do you have any idea when that second time would have been, Mr. Shelton? A. I didn't check my records. I think it was possibly '65. It might have been '64 or '65.

Q. Thank you. A. I might add, I also conferred with Mr. Craig and Mr. Wiley, and there were two other attorneys, I believe, in the meetings, as to the requirements for what might be required of this particular fund.

Q. Thank you. Now, have you had occasion to examine these records recently, Mr. Shelton? A. Of the Political Fund, yes, we have.

Q. Would that be the Political, Educational, Legislative, Charity & Defense Fund that you are talking about? A. Yes, sir.

Q. Do you recall when it was, recently, that you first [1,466] saw these records? A. I didn't check the date. That was the date that they were returned by the Government to your custody, and they were returned to the eighth floor of the Merchants Laclede Building, and this was the first time that I saw them. At that particular time, I was asked to determine if the Union's records had all been returned, and I made a cursory inspection at that time, and it appeared that all of the local Union's records had been returned. These records were also there at the time. We started the following Monday with three people working on these records, in accordance with your instructions.

Q. Mr. Shelton, you are the Certified Public Accountant for Pipefitters Local 562; is that correct? A. That is right.

Q. And what you are stating is that you examined the records which had been returned, the Local 562 records which had been returned, to determine their condition and whether they were all there; is that correct? A. That is correct.

Q. Now, Mr. Shelton, I'd like to briefly ask you—excuse me a moment—I'd like to show you Government's Exhibits 1 through 5, and ask you to look briefly at them.

(Records were brought close to the witness.)

The Court: There's four here.

[1,467] Mr. Nangle: I believe there is a check register there too that is marked as an exhibit.

The Witness: I saw that. I think you have one more book.

Q. (By Mr. Nangle) Now, I will hand you what's been marked Defendant Local 562's Exhibit J, Mr. Shelton, and ask you to look at that, please. Would you tell me what those records that you have just examined, which would be Government's Exhibits 1 through 5, and Local 562's Exhibit J, would comprise, Mr. Shelton? A. These records consist or include the record of the disbursements of the Pipefitters Political Fund, and there is a summary for three of the five periods of the receipts of the Fund.

Q. And the total receipts for the other two years, are they included, Mr. Shelton? A. I believe that they are, on separate sheets. Let me recheck.

Q. I believe the total is entered in the summary at the back, if I am not mistaken. A. That would be '63 and '64. Yes, you are right. It is in there also.

Q. Would you tell the Court and jury, Mr. Shelton, what period of time is covered by these receipts and disbursement [1,468] records you have? A. From January 1, 1963, through September 30, 1967.

Q. Now, Mr. Shelton, I'd like for you to look hurriedly at Local 562's Exhibits K, L, M and N, which are on these carts here, if you would, sir. And O.

(The witness stepped down from the witness stand to look at exhibits.)

The Court: In the interest of expediting this, Mr. Riddle, is it possible for Mr. Nangle to suggest what these various things are?

Mr. Riddle: Perfectly agreeable with us, Your Honor.

Mr. Nangle: Thank you, Your Honor.

The Court: K, L, M, N, and O are all Pipefitters Voluntary sheets, aren't they?

Mr. Nangle: Yes, Your Honor.

The Court: And one of them happens to be—I don't know whether that is the exhibit or not. The receipted bills, one of those.

Mr. Nangle: No, there is P, which is the checks, Your Honor, and Q, R, S, and T are the paid bills. That is what Your Honor is referring to, I believe.

The Court: All right.

Q. (By Mr. Nangle) You have examined these records very recently, haven't you, Mr. Shelton? [1,469] A. Yes.

Q. All right. Now, I believe before you stated that you and some of your staff began examining these records after the time they were returned on August 9th. Did you examine these records to determine whether the money was accounted for, Mr. Shelton? A. We did.

Q. And did you examine these records to determine what persons did not contribute to the Voluntary Fund? A. No, sir, we did not. We were asked to, but it would have been an impossible task to complete within the time permitted.

Q. Were you able to completely finish your analysis of the receipt and disbursements of the money, Mr. Shelton? A. We accounted for all of the money which was collected for the entire period. We have a small difference, which I believe to be possible errors, that we did not have the time to completely run down and eliminate.

Q. Mr. Shelton, would you try to briefly tell the Court and jury what you did in your review of these records between August 9th, or shortly after August 9th, when you started, and the beginning of the trial? A. Yes. Each of the envelopes contained collection lists of the contributors to the Fund. Some of them, the [1,470] sheets represent collections which were brought in or mailed in, and other sheets including collections which were received by Mrs. Stieferman or others, whoever it might have been, at the Political Fund office. We added and attempted to tie up every one of these records, each of these sheets for the entire period, with the amount of money which was indicated on the summary sheets for the entire period of four years and nine months. We also test-checked the addition of the individual sheets to see that the totals were valid. We traced the deposits and compared the deposits with the monies received. The monies which were disbursed by currency during this period was entered on their records, and we examined the supporting documents on those particular disbursements, and we found that of the total money received, less that money which was paid out, was deposited in the bank, with the exception of this minor difference which I mentioned.

Q. Did you examine the checks and bank statements, Mr. Shelton? A. We test-checked—first we examined all the bank statements for the deposits. We test-checked the disbursements by examining, checking in all of the outstanding checks at the end of each month, and then detailed examination of three months of the disbursements

for each of the five periods. We also compared the paid bills on a test basis for [1,471] three months of each of the five periods.

Q. Did you check the endorsements on the checks? A. That is part of the detailed examination of the checks. We checked for endorsements. We checked for the payment date, the proximity of the payment date or the issue date. We checked for signatures, and any other indication that the check might have been other than as represented, and found no particular exceptions.

Q. Did you summarize the receipts and disbursements after you finished all this other work, Mr. Shelton? A. We summarized them for the entire period.

Q. Mr. Shelton, would you describe the condition of the records during the time that you examined them, subsequent to August 9th of this year? A. The records were not as I saw them on the prior examination. The first time that I examined the records there were adding machine tapes attached to each of the individual envelopes. There were adding machine tapes attached to the collection of—the groupings of the collection sheets inside, and when I examined them at that time, I don't mean an audit as such, but to see that they were doing what they said they were doing, I found that the receipts were all in order. The sheets were in order. They appear on the adding machine tapes, and there were also adding machine tapes which [1,472] accumulated the totals then of all that was in the envelopes, so it was very easy to check them right down the line.

At this particular time, many of the envelopes contained reports which did not belong in the respective envelopes. It was difficult to—well, it was a situation of, in many instances, having to put them back in the proper envelope in order to balance out with the totals.

We found some instances where some of the regular Union's, the local Union's records had been put in with

these; that they didn't belong there. We had to run down to see that they did belong to the local Union, and take that out.

Q. Mr. Shelton, when you conferred with Mrs. Steiferman and myself on an earlier occasion, what type of records were being maintained for this Fund? A. They were maintaining an individual ledger sheet for each contributor, and they were posting the amount of the contributions of that individual contributor to each of these names, and then after the postings were made, which were designated by a printed date, the machine posted a total, or adding machine total was then run and compared with the total of the postings. The machine also produced a total of the amounts posted. The correction sheets had to be made for errors in posting when the amounts did not balance out with the total amount that had been cashed, and it involved a great [1,473] deal of detail work to maintain these items. I estimate there's approximately 380,000 postings would be required for this particular period.

Q. Mr. Shelton, other than the number of postings, were these records complicated? A. Very simple. The postings were made directly from the ledger sheets—I mean from the collection sheets, and they were simple. There was no need for any particular complicated accounting system to record the amount of monies received and the amount disbursed.

Q. And would it be fair to say that the suggestions that you made tended to simplify and make more—strike that. Well, would you describe the systems that you were suggesting at the first time that was discussed? A. I suggested that the collection list be preserved within the envelopes as they were being done, that the tapes be tied in with the total collected, and that this be summarized then for the month, and the tapes which were on those envelopes at the time did that. We eliminated the individual postings to the contributors' accounts.

Q. Now—— A. If I might add, the purpose for eliminating, the Fund was voluntary and there was no particular requirement to determine how much individuals had contributed.

[1,474] Q. Mr. Shelton, were you also asked to prepare a summary of the categories of disbursement, in addition to your work on the receipts and disbursements figures? A. Yes, sir.

Q. And did you prepare those summaries? A. I did.

Q. And do you have those summaries with you, Mr. Shelton? A. Yes, sir.

Q. This is the receipts and final determination of the Fund, and this is a summary of the disbursements.

(Thereupon Defendant Union Local 562's Exhibits Z and AA were marked by the reporter for the purpose of identification.)

Q. Mr. Shelton, I will hand you what's been marked Union Local 562's Exhibit Z, and ask you if you would tell the Court and jury what that is, please? A. This is a summary of the totals of the collections for the total period, that is, the contributions collected, and to which we have added the balance of the cash on hand at the beginning of the period, and from which we have deducted the total of the disbursements, and I might add the total of disbursements less some refunds which were received, and from the total of the receipts and beginning balance we have deducted the disbursements and a difference, the differences between [1,475] the amount accounted for, and we have come to the amount of the actual cash at the end of the period on September 30, 1967, and we have shown the balance of that to be in two banks.

Q. Now Mr. Shelton, I'll hand you what's been marked Union Local 562's AA, and ask you if you can tell the Court and jury what that is, please? A. This is a summary of the total disbursements for the period from Janu-

ary '63 through September 30, 1967. The totals were verified. We made tests to determine the validity of the disbursements, as I said before. The distribution was accomplished by assistance from Mr. Lawler and Mr. Callanan as to the purpose of some of the items, as to whether they were administrative or whether they may have been political, and some explanations which were required, we received from them.

Mr. Nangle: Your Honor, at this time I'd like to offer into evidence Local 562's Exhibit Z and Exhibit AA.

The Court: All right. They will be received.

Mr. Riddle: There is no objection.

(Whereupon Defendant Union Local 562's Exhibits Z and AA were received in evidence.)

Q. (By Mr. Nangle) Mr. Shelton, would you review for the jury the Exhibit Z? Would you tell the jury what this exhibit states? A. Exhibit Z starts with the balance of cash on hand at [1,476] the beginning of the period that we examined, January 1, 1963. To that we have added our audit totals, not the totals in the books, but the totals that we determined from the collection sheets, and from that we have deducted the amount of the disbursements which were made during this entire period, the disbursements both in currency and the disbursements by check. We then have added to the amount to be deducted the sum of $1299, which we were unable to account for in this period, and I have called them differences on this statement, but I do not want to qualify the word.

I believe from the experience we have had, if we had sufficient time we might have been able to locate the reason for these differences, and in that particular regard I point out that in some cases there appeared to be a possible duplication of a collection. The collection may have come in and may have been rewritten on some of

the office records. This I'm not certain of. We did not have the time to find out.

Also, the postings which were made on the ledger sheet for each individual contributor, in order to locate any possible differences between the totals which were posted by Miss Stieferman, and those which we found, have involved such a tremendous amount of time we would not have been able to accomplish it, and we believe that for the purpose of this examination, the difference is so minor with respect to the [1,477] total, that it would not justify the time required to run it down.

Q. Mr. Shelton, I'd appreciate it if you'd review quickly for the jury the figures that you have just described. A. The balance on hand at the beginning of the period was $44,361.82. The Government has an exhibit, which I made a hasty comparison of our figures with the Government figures, and I think we have stated collections for the period a total of $1,480,000, and by comparing them with the chart of the Government, I find their figures are somewhat smaller, and it is possible that they had so much additional time that they may have located some of the errors that we could not locate.

The collections in 1963, according to our records, our determination was $286,243. The amount on the chart is $286,029. They have some $214 less.

1964, our totals were $290,838, as compared to the amount of the Government as $289,783, our total being some $55 higher.

In 1965, the Government's figures are 415,963. We determined, from our totals, it to be $415,959.

In 1966, our total was $239,200. The Government has $11 more than we have.

And in 1967, our total was determined to be $248,309, and they do not include it on their chart.

[1,478] Q. What was that last figure, Mr. Shelton? A. $248,309.

Q. This period in September is not listed on the Government's exhibit? A. I don't believe any of 1967 is listed there.

Q. That is Government's Exhibit 60 that you are looking at, the chart? A. I don't know. I can't see it.

Q. Would you go on, Mr. Shelton, and review—then you come up with a total? A. Total collections for the period are $1,480,551, which, together with the cash on hand at the beginning of the period, requires an accounting of $1,524,912.

The disbursements for the period were $1,368,484. We have an unaccounted difference of $1,299, and it leaves a balance on hand of $155,000 on September 30, 1967, which was represented by deposits of $290 in the American National Bank in St. Louis, and deposits of 154,837 in Southwest Bank.

Q. Is it your testimony that all of the money of the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was deposited in the bank on September 30, 1967?

Mr. Riddle: Object to that. That would be calling for a conclusion that no previous testimony has justified; [1,479] leading and suggestive. I object to the form of it.

Mr. Nangle: All right. Let me ask you this question, Mr. Shelton.

The Court: Beg your pardon?

Mr. Nangle: May I restate the question?

The Court: Yes.

Q. (By Mr. Nangle) Mr. Shelton, did you examine the money of the Fund at the end of this period of time, which would be September 30, 1967? A. We reconciled the bank accounts; yes.

Q. At that time? A. That's right.

Q. And according to this Exhibit Z, how much money would be on hand at the end of this period of time, or on September 30, 1967? A. There was on deposit in the bank $105,128.

Q. Was there any currency on hand at the end of this period of time? A. None that I know of.

Q. But—— A. There was none available. I will put it that way. There could have been none, because it was all deposited; that which had not been disbursed.

Q. In other words, all the money that was reflected in [1,480] the record was in the bank on September 30, 1967? A. The balance that is reflected by the records was in the bank; right.

Q. Mr. Shelton,—May I have a moment, Your Honor?

The Court: You may.

Q. (By Mr. Nangle) I'll hand you Government's Exhibit 140, and ask you if you find a deposit of $101,077 on that exhibit? A. Yes.

Q. I'll hand you Local Union 562's Exhibit J, and ask you if you find that deposit recorded therein? A. Yes, sir.

Q. I'll hand you Government's Exhibit 143, which I believe reflects a deposit of $189,000, and I'll hand you Government's Exhibit 5, and ask you if that deposit is recorded there? A. Yes.

Q. Thank you. Mr. Shelton, when you recently examined the records of the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund, did you find whether or not the recommendation you had previously made to Mrs. Stieferman and myself had been taken into account and done in the keeping of these records? A. Yes. She had accumulated her deposits. Unfortunately, [1,481] some of the tapes were missing that we couldn't check them, but she had accumulated her deposits and recorded them, and where we could find tapes,

they tied up with the records. And in most cases we were also able to reproduce tapes to tie up with the records.

Q. Were the receipts kept in the manner in which you had previously suggested? A. Yes.

Q. The paid bills, I mean? A. The paid bills, no. They were somewhat mixed. We found the paid bills had been moved from their respective envelopes apparently, and were not in the order that they should have been.

Q. But they were there, weren't they, Mr. Shelton? A. They were there; yes.

Q. And I believe you had previously stated that you are a Certified Public Accountant for Pipefitters Local 562? A. Yes, we are.

Q. And your firm has done their auditing for what period of time, Mr. Shelton, if you recall? A. The first time we were engaged in 1953, and we covered a period of seven years from the date of their prior audit, and then we have done it annually since then.

Q. Excuse me a moment. Mr. Shelton, I will hand you [1,482] Government's Exhibits 63 through 68, and ask you if you can tell what these are? A. These are reproductions of that which we call Form LM-2 for the local union, for the period beginning October 1, 1961, and going through September 30, 1967, and they were all prepared by my office.

Q. Prior to the completion of these records, Mr. Shelton, did you confer professionally with anyone about their content? A. The financial data is ours. We normally referred, I believe, in all cases we referred the reports to Mr. Craig for any matters which should be reported to the Labor Department with reference to By-Laws or other official acts of the Union. The financial data is ours.

Q. In other words, you reviewed these with Mr. Craig before they were submitted to the Union officers for signature; is that correct? A. Correct; yes, sir.

Q. And did you comply with any recommendations that Mr. Craig made? A. Yes. If he advised us that we should add answers to the page 1, the additional information data, any items which he stated should be reported, we included.

Q. Mr. Shelton, would you please tell the Court and jury the full name, Mr. Craig's full name, and his firm? [1,483] A. I think it's Wiley, Craig—I am sorry, I can't tell you. I don't remember it.

Q. What is his full name? Would it be Harry Craig? A. It is Harry Craig. You refreshed my memory. That's right. Harry Craig.

Q. Mr. Shelton, you know Mr. Lawrence Callanan, do you not? A. I do.

Q. And do you know whether Mr. Lawrence Callanan was ever on the payroll of the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund at the same time he would have been on the Pipefitters Local 562 payroll? A. We have examined the records of the Political Fund, if I may use the shorter term, and we have examined the records of the Union fund for this entire period. At no time did Mr. Callanan get paid from both jobs at one time.

Q. He may have worked at both jobs, but he received no compensation from both jobs? A. He received no compensation.

Q. Now, Mr. Shelton, are you familiar with the Voluntary Fund, Inc., a Missouri not for profit corporation? A. I am.

Q. And did you assist in the record keeping for that corporation? [1,484] A. At your request, we prepared the records for their first year, June 30 of 1967. We prepared the records for them, and such other data as they needed.

Q. Mr. Shelton, I'll show you Local Union 562's Exhibit AA, and I see at the bottom a total of $191,670.41 listed for Recreation Center. A. What is your question, sir?

Q. Was this money paid to the Voluntary Fund, Inc.? A. It was either paid to them by checks, or it was expended for the benefit of the Voluntary Fund, Inc. The Voluntary Political, Educational, Legislative, Charity and Defense Fund paid some bills for the Pipefitters Voluntary Fund, Inc., and the amount that was paid for them is included together with the amount of money that was actually transferred to their bank account.

Q. And it was also listed on the records of the Voluntary Fund, Inc., those expenditures on behalf of the Voluntary Fund, Inc.; is that correct? A. On the records of the Voluntary Fund, Inc., we picked up the amount of the disbursements and treated it as being a paid-in capital to the Voluntary Fund, Inc.

Q. Now, Mr. Shelton, in September or October of 1967, do you know if the trustees of the Pipefitters Welfare Fund decided to purchase a portion of the land up in Clarksville [1,585] that was owned by the Voluntary Fund, Inc.? A. Yes. We were asked to prepare certain amounts, and the schedule to determine it, and which would be paid to the Pipefitters Voluntary Fund, Inc. by the Welfare Fund.

Q. Were you asked to accumulate the cost so that it could be purchased at its precise cost, Mr. Shelton? A. That's right, we did.

Q. And you have the total that was paid for that portion of that land on your schedule there, Mr. Shelton? A. I do. The total that was paid by the Welfare Fund to the Pipefitters Voluntary Fund, Inc. is $65,141, and this was paid to the Voluntary Fund, Inc. in November of 1967.

Q. Do you have Local Union's Exhibit AA there, Mr. Shelton? A. Yes.

Q. Would you please read the totals of the various categories that you have accumulated? A. There was accumulated in the category of administrative expense a total of $192,898. The category for political contributions in expense of political activity was $867,080. The contributions to civic and charitable organizations and groups, $106,728. There was paid as aid to members, a total of $10,106. There was paid for the Voluntary Fund, Inc. a sum of $191,670.

Mr. Nangle: Excuse me one moment. I have no further [1,486] questions, Your Honor. Thank you, Mr. Shelton.

The Court: Will you step up a minute, please?

(Thereupon a colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury and the reporter.)

The Court: You may step down.

(Witness stepped down.)

The Court: Members of the jury, I must go to Hannibal tomorrow on court work. Customarily my staff goes up today, and they customarily leave in time to get there before dark, and you may have seen my bailiff go out before. So I am going to recess until Monday morning at 9:00 o'clock so they can go. In the meantime, I am not going to impound you, so I want to call to your attention again the admonition I have given you heretofore about not discussing this case with anyone, or permitting anyone to discuss it with you. You are not to talk to any lawyers, parties or witnesses. You are not to read any newspapers and you are not to listen to radio or television at the time that there is likely to be any stories on about it. If there is, you should turn it off and not listen to it.

All right. See you all Monday morning at 9:00 o'clock.

(Thereupon at 4:00 p.m., on Friday, September 13, 1968, court was adjourned until 9:00 a. m. Monday Morning.)

[1,487] Monday, September 16, 1968
Morning Session

CARROLL C. SHELTON,

having previously been sworn, resumed the witness stand, and the further following proceedings were had:

Mr. Nangle: Your Honor, I have some enlargements of Mr. Shelton's. Would it be all right to mark those now, or would you prefer to wait until later?

Mr. Riddle: It would be perfectly all right to do it now.

(Thereupon Defendant Union Local 562's Exhibits BB and CC were marked by the reporter for the purpose of identification.)

Mr. Nangle: May the record reflect that Exhibit BB is an enlargement of Local Union 562's Exhibit Z, and Exhibit CC is an enlargement of Local Union 562's Exhibit AA, Your Honor?

The Court: All right. The record will so show.

Cross-Examination.

By Mr. Riddle:

Q. Mr. Shelton, you testified Friday prior to the recess. As I recall, you identified yourself as a C.P.A.? A. That is right.

Q. And the person who has done accounting work for Local 562 for the past several years? A. Yes, sir, that's right.

[1,488] Q. Now, sir, have you audited the books and records of the Union's various funds? A. Only the funds of Local 562. The fund of the Secretary-Treasurer of the Union. Specifically, not the Welfare Fund nor the Pipefitters Voluntary Political Fund.

Q. Now, you say you have audited the receipts and disbursements and the books and records of all monies that the Secretary-Treasurer of the Local is accountable for? A. Right.

Q. Sir, where does the money that goes into those funds, that is, the ones that the Secretary-Treasurer is accountable for, where do they come from? A. They come from dues of the members. They come from the daily work assessments of the members, and from interest earned. That substantially covers it.

Q. But it would cover all the dues and all the day-to-day assessments? A. Right.

Q. From all of its members? A. Yes, sir.

Q. And, of course, that money on occasion draws interest, and that would be an additional source of income into that account? A. Right. They have invested surplus funds in Treasury [1,489] certificates, and at one time they had a certificate of deposit in a local bank.

Q. Yes. Now, you mentioned the Welfare Fund. Have you done any work with those books? A. None at all.

Q. Do you know who does? A. I think Gillies and Dwyer are the accountants who handle it.

Q. That's another C. P. A. firm? A. It is a local C. P. A. firm; right.

Q. Now, to your knowledge, from examination of the books and records, is the money that goes into the Welfare Fund money that is contributed into that by employers, contractors? A. I have never examined them. It is my understanding that they are the fringe benefit contributions from the employers.

Q. Now, sir, in connection with the monies that come into the Secretary-Treasurer, as you have described it, how are those monies kept? In bank accounts? A. Yes. I would say yes. Bank accounts and investments and Treasury cer-

tificates, and as I said, at one time they had a continuing certificate of deposit.

Q. How many different accounts do they have? A. Bank accounts?

[1,490] Q. Yes. Covering those funds. That is, of the regular dues and assessments? A. I believe they had one, I think—a total over the period of three.

Q. Three different accounts? A. Three different bank accounts.

Q. Now, sir, in your examination of those records, can you tell the Court and jury who is authorized to execute checks to withdraw funds from those accounts? A. Well, I know Mr. Burke is. There may be others. I don't recall without having referred to our files. I wouldn't recall who they were. Some of the other officers may be on the checks. Mr. Burke signs—To the best of my knowledge, he signs them all.

Q. All right, sir. How often over the past several years have you made an audit of those funds? A. I think our first engagement was 1953, and if I can recall correctly, we went back six years to cover the period to which a prior audit had been made, and since then we have made the audit annually. On occasion we have gone in on a semi-annual basis to do part of the work on an interim basis, but the audit is as of an annual date. Year was September 30th, and last year they changed it to a calendar year, so for 1967 we were in as of the end of September, and began as of the [1,491] end of December.

Q. Now, as a result of the audits that you performed of those funds, the receipts and disbursements, do you file a written report annually with the Union? A. Yes, sir.

Q. And on this report you make certification that you have examined the records, and the report that you give is true and correct? A. Yes, sir.

Q. And base your professional reputation on what you have examined? A. We do.

Q. And you itemize, I assume, in your audit you check each and every expenditure and each and every receipt? A. Well, not each and every. We normally do a substantial test of the items, enough to satisfy our professional opinion that the funds are being accounted for, and that the disbursements are proper.

Q. And you say the money that comes in to the Welfare Fund, you have never audited those books and it is your understanding that another C. P. A. firm does that? A. Correct.

Q. Now, sir, how much time does this annual audit consume? That is, your time and the people working under your direction [1,492] and supervision? A. Well, I have not—last year I did supervise the job myself. Most of the years I do not supervise it. One of the other partners will have supervised it. Without refreshing my memory, I would say that we have a total time of, oh, let's see—oh, approximately fifty to sixty man days.

Q. That your people spend down at the Union hall? A. That, and working on the file in the office. That would be the total time.

Q. And this happens once a year, and it's happened once a year since 1953? A. Correct.

Q. Now, sir, have you ever been requested, prior to the last few months, to make an audit of the account known as the Political Voluntary account? A. The matter was discussed at one time on a very general basis, and to the best of my recollection, I expressed the opinion at the time that I saw no particular need for us to audit it. I believe if I had, why they would have employed us to do it.

Q. Sir, did they ever ask you to do it? A. Specifically, as I said before, I do not recall—I'm sure they never asked

us specifically, or we would have done it. I think it was discussed at one time.

[1,493] Q. Who did you discuss it with? A. With Mr. Nangle.

Q. Anybody else? A. There may have been someone else present, a Miss Stieferman present at the time it was discussed. I really don't recall specifically. I didn't think it a matter of great importance at the time.

Q. Yes, sir. Now, sir, you did perform some sort of an examination of the records of that Fund over the past few weeks? A. Oh, yes. Yes.

Q. Now, was that an audit that you performed? A. It was a special examination for the specific purpose of attempting to account for all of the recorded receipts of the Fund.

Q. Now, sir, you say to account for all of the recorded—— A. Or all of the receipts of the Fund. Let's put it that way.

Q. What did you mean when you just used the word all "recorded" receipts into the Fund? A. I think that's a professional habit, that we work with records, and we refer to the records and receipts are recorded, and these are the receipts with which we are working. Contained what we actually worked with were all of the collection sheets which are represented in those boxes over [1,494] there. We started with those and accounted for the money which was represented by the collections on those sheets.

Q. Well, now, sir, are you testifying and telling this jury and this Court that all of the money received from all of the members of Local 562 and out-of-town members has been accounted for? A. All of the money that is listed on those sheets has been accounted for.

Q. Yes, sir. My question, sir, are you telling the Court and jury that all of the money paid by the Union members, 562 and out-of-towners, has been accounted for? A.

I don't want to quarrel with you, Mr. Riddle. All of the records, all of the cash of which I have knowledge has been accounted for.

Q. Well, my question is, are the records—let me rephrase it, sir.

Are the records that you have, sufficient for you to tell this Court and jury that all monies received have been accounted for? A. Well, specifically, we made a test for a two-year period.

Q. If you would answer the question, and then make your explanation.

The Court: Answer the question. Then make your [1,495] explanation.

The Witness: It is a difficult question to answer. It is a double-barreled question. We made certain tests, and I would say for the latter period we did not have the time to do certain tests that we wanted to.

Q. Sir, maybe I can make my question a little bit more single-barreled. A. All right, sir.

Q. Can you now tell the Court and jury whether or not these records are adequate for you to, as a professional man, to account for all the money that was collected from the jobs? A. No, I can't say that; no, sir.

Q. All right, sir. And why can't you? A. Well, number one, anyone may have collected money and not listed it on the sheets, as a starting point.

Number two, they may have collected the money listed on the sheets and never turned it in. That would have been a collection not accounted for.

And, finally, money could have been collected and they could have turned it over to a messenger. It never was received. The money may have been turned in and have been lost somewhere in the handling, and

Thirdly, I suppose that Mrs. Stieferman, or anyone else, could have absconded with part of the money by destroying [1,496] those lists, and I would like to make an explanation of what we did to try to account for some of that.

Q. Yes, sir. Well, now, in just a little bit we will get back to that.

You are saying then that it is entirely possible that the money, even if it were collected off the job, we will say from ten employees, could never have gotten into the office? A. That's right.

Q. One. A. Yes, sir.

Q. That the messenger could have lost it or absconded with it? A. Right. An office employee could have absconded with it.

Q. Number two, you are saying from these records you have no way of knowing the money, once it was collected and actually arrived in the office, was actually accounted for or deposited in any account, because there is a possibility that people in the office—— A. Could have absconded with it; right.

Q. Or a third possibility is, from your testimony, if I understood it correctly, is that the money could have gotten into the office, and it could have been taken out by people other than employees in the office? [1,497] A. Well, if the employees made the record, were making a record of the collections, I would assume that they were to come up short somewhere down the line. It would be called to their attention.

Q. The simple matter of fact, sir, is, or is it not, that if any person wanted to take a thousand dollars out that was in cash, the only thing that they'd have to do was pick up enough of these daily reports, or weekly reports, that total a thousand dollars, and there would be absolutely no way for you to determine that? A. There would

be a way for us to determine it; yes, sir. We didn't have sufficient time to do that. That is part of the explanation I wish to make when we get to it.

Q. Yes, sir. But you say that—You are not saying that that did not happen, or could not have happened? A. It could have happened.

Q. You are just saying that you don't know? A. That is right.

Q. Now, sir, you say that you could have checked it out? A. Yes, sir.

Q. Assuming that ten people paid to a steward on the job, and those ten people were given no receipts, and that the collections sheets from those ten people were destroyed, how would you go about checking that out? [1,498] A. For the first two years we attempted to make a——

Q. Just answer the question, if you will, how would you go about checking that hypothetical situation out? A. We would sort all of these sheets into a source order, a job order, the job from which the men would be working, from which the stewards were collecting the money. We then would have gone to the Welfare Fund to see the names of the people who were being covered by employers, in other words, outside of the Union, but the source being the reporting sheets by employers to the welfare would have given us the names of all of the people who were working on the particular jobs at a particular period. We then, if we had had sufficient time, would have compared the contributors represented by these sheets with the information we would have obtained from the Welfare office, and we believe that would have given us a rather substantial check to see whether any sheets were missing.

If a name were missing on a job, if we could account for all the jobs, collection lists from the jobs, and a name wasn't on there, there would be no way we would be able

to determine it, because the Fund, being voluntary, there was no compulsion that they pay.

Q. Is this your expression? Did you say it was voluntary, no compulsion to pay? A. That is what I understand.

[1,499] Q. Is this what you were told, or is this what you know? A. I believe the card states that.

Q. The question is, is this what you know or is this what you have been told? A. It is what I have been told.

Q. Yes, sir. Go ahead. A. I am trying to explain why we would not be able to distinguish between the members in the local union. Their dues and assessments, we account for every member, we examine a collection card for every member. Now, there are members there that do not pay, and on that, those particular members who are not required to pay, we ask the Board of Trustees to approve the absence of collections of funds from them. We compare these collections, these members' cards with per capita reports, to be sure that we have them all, distinguishing these sheets. If there is no compulsion, again, if I—I will restate it, if there is no compulsion for them to pay, then I cannot demand that I find a collection item from each member. I am trying to distinguish between the two.

Q. Yes, sir. Now, you say that there are some people who are exempted or excused from paying assessments? A. The regular members?

Q. Yes. A. Those who are ill and not working, and those who are [1,500] in military service, and those who are retired.

Q. Or who have a special hardship? A. In a case, a special hardship. I believe, however, if they are working, there are very few who are excused. I can't recall any who are excused that are employed.

Q. But some are, to your knowledge? A. The unemployed, the aged, the ill, and so forth.

Q. Would be excused from paying assessment? A. Assessment and dues, both.

Q. What about an assessment? A. If they don't work, there would be no assessment.

Q. Did you just testify some assessments were excused for hardships? A. I'll correct that. I don't think any assessments are excused; only the dues are. If they are working, there are assessments, and I know of no assessments excused from working members.

Q. Sir, in going over your audit, the one that you conduct from time to time of their regular accounts, receipts and disbursements,—— A. This is the regular Union funds.

Q. Yes. Do you go through the checks and get some general knowledge as to the type of disbursements, the type of expenditures that are made out of those regular union funds? [1,501] A. By tests, we examine paid bills and vouchers and other support for the items which are being disbursed. Again, the Board of Trustees approve all of the disbursements each month, their cash disbursements records, and I think if you will examine them you will find the names or the initials of the trustees who approved the disbursements each month. This gives us some sense of security, but in addition to that, we do examine by test the record disbursements, the checks that are issued.

Q. You say the checks that are issued are all approved by a Board of Trustees? A. The disbursement is approved.

Q. Yes. But in getting at the type of disbursements that are approved, did you develop some familiarity with the nature, generally, of the expenditures or disbursements? A. Familiarity with?

Q. Yes. A. Yes, we have. I think we have a general familiarity; yes.

Q. What are the general or typical type disbursements from out of the regular fund that the Board of Trustees

approved? A. Well, I believe, of course, the largest number of disbursements, recurring disbursements, are for the salaries of the employees of the Union.

[1,502] Q. All right. A. Officers and employees. Possibly their second largest class of expenses, in amount, would probably be for travel. I'm guessing. This is available, but I don't have it with me.

Q. All right. A. The third would probably, might be, oh, the third would probably be, oh, contributions.

Q. Contributions, to whom? A. To various charities, and so forth.

Q. Charities? A. Various charities and civic-support type organizations.

Q. Such as? To boys' clubs? A. Boys' clubs.

Q. Churches? A. Right. A lot of them for churches. They normally would take an ad in some church paper, or they will make a contribution to, well, I know they buy a large amount of tickets to the Shrine Circus each year; various items that they are solicited for.

Q. All right. The charitable payments from out of that Fund are rather diversified and numerous? A. Right.

Q. And cover a multitude of projects, all the way from [1,503] church functions to community affairs, to specific charity efforts, etc.? A. Yes. I left out one very large one in the nature of disbursements would be per capita tax.

Q. That goes in to the United? A. It goes in to the United, and they pay per capita tax to, in addition to the United Steamfitters, they pay to, oh, food industries, they pay to, I think there is one other. They are small. The large ones go into the national fund.

Q. Now, out of these charitable contributions that we referred to, this would include, specifically, hospital projects, hospitals around over the area? A. It would if they gave to them. I can't specifically recall if and when they

did give to a hospital. This fund did. This particular—the Political Fund made contributions to hospitals.

Q. But this is the type of contribution that frequently appears under the charitable contributions in the regular account? A. Right; yes, sir.

Q. Sir, in going over the books and records of the Fund, the one that you have just recently examined—— A. Political Voluntary Fund?

Q. Yes. Did you find a substantial contribution from [1,504] that Fund also? A. Contributions of these charitable and civic natures?

Q. Yes. A. Yes, sir, we found quite a substantial amount of money.

Q. In fact, you have totaled these amounts to approximately $106,000? A. Yes, sir.

Q. In looking through the civic and charitable contributions, did you see a similarity between the recipients' projects as between what you observed in the regular Fund and out of this Fund? A. I don't—you said similarity. You mean to the same charities?

Q. In a general sort of way, the same kind? A. Yes, sir. We would consider the term civic and charitable contributions would include the same overall scope.

Q. Any check, if you saw it in here, if you saw it in your regular account, you would—— A. I would so classify it.

Q. You would have so classified it. Sir, you have categorized another list and headed it "Aid to Members," and you have shown that to total $10,000. A. Yes, sir.

Q. Do the records indicate to you the type of aid, or [1,505] the members who were receiving that aid? A. The disbursements of the first two years were classified by Miss Stieferman as to various categories, and we inspected them. I would like to qualify. I thought I made clear

that this distribution was done rather hurriedly. Our primary engagement was for the purpose of trying to account for the recorded collections, the collections that are recorded on these sheets. This was done rather hurriedly, and it was done with the aid of Mr. Lawler and Mr. Callanan, in some cases, to tell us what the disbursement was for.

Q. Yes, sir. A. I do not represent this as an independently verified audited figure. I would like to make that clear. Now, coming back to your question——

Q. The aid to members. A. The aid to members were payments which were distributed to a charity column by Mrs. Stieferman. We found some errors in her distributions. We reclassified them, some apparent errors.

The aid to members represented payments to people who apparently were financially in need at a time there was a strike existing.

Q. Yes, sir. And this was explained to you as being money paid to members for their needs relating to a strike? A. Not to a strike, because they were not strike benefits, [1,506] as such.

Q. I understand that, but I am asking you how it was referred to you and how it was explained to you by Mr. Lawler and Mr. Callanan. A. They stated that these people—this money was given to them as assistance at a time when they had no income, and it was for the general welfare of these people.

Q. And you say that this was during the time of a strike? A. Yes, sir.

Q. All right, sir. Now, sir, in connection with the column that you have headed, "Administrative," did you make a sufficient check of the records in order to determine what type of expenditures formed those figures? A. Mr. Riddle, that is a catch-all column. I am sure that a

substantial amount of money in that column was used for political purposes.

For instance, in that particular group, in payment of printing bills, where the bills were indicated to be for a particular political party, or political candidate, or political cause, it was classified as a political expenditure.

Q. And show up in the political—— A. ——column.

Q. All right. A. But there were many others that were merely printing [1,507] that did not indicate that that was the particular purpose of the printing. There were invoices for many thousands of mimeograph, unprinted mimeograph paper, items of that type that we couldn't attribute to anything particular, that found their way into that column.

In this column were other items which we could not identify with a particular political activity.

Q. Now, sir, under the Administrative column, do you specifically recall one of the items was a Victor adding machine? A. Yes. There was a payment to Victor; yes.

Q. All right. Do you know where that Victor adding machine is? A. No, I do not.

Q. Did you ever see it? A. No, sir.

Q. Well, is there a Victor adding machine in the regular Union office that you go to each year? A. Well, this—we account for the equipment at the regular Union by——

Q. My question, is this machine being used by the Union? A. I don't believe so. It may be. I don't know. I haven't noticed it. Let me put it that way.

Q. Now, sir, when an expense item for new automobiles may show up—— [1,508] A. Mr. Riddle, if I may go back and re-answer that first question. I know Mr. Burke wished to buy some adding machines, and he called us, and we recommended a certain make, which is not a Victor adding machine, and I know that he personally has

two of those particular type machines in his office. I don't recall a Victor adding machine in his office.

Q. Yes, sir. Sir, with reference to automobiles that were purchased, how would they show, which column would they show up in? A. Administrative.

Q. Did you find any automobiles purchased? A. Yes, sir.

Q. How many? A. There was a station wagon, and I think there may have been a total of three. I don't recall specifically. I think there were three.

Q. Three? A. Including the station wagon.

Q. All right, sir. Do you know what the others were? A. I believe—I don't know that I got the invoices out on them all. They told me they were for automobiles, and we classified them that way. I would rather not guess.

Q. Yes. Were there any indications in the records as to who those cars were for? [1,509] A. No, sir, not on their disbursements records; no, sir.

Q. Did Mr. Callanan and Mr. Lawler explain to you whom they were for? A. No. I don't believe it was brought up at all.

Q. I see. Now, sir, in connection with the administrative further, did you notice payments to individuals that would be rather substantial, such as $5,000? A. For political contributions?

Q. No, in the Administrative column. A. No. I don't recall any classification classifying any such items as administrative.

Q. What about a payment in May of 1963 to John Hough for $5,000? Would you look at that book and see how you classified that? A. May of '63?

Q. May 20th of '63, to be exact. A. That was classified as of—yes, John Hough. That was classified as administrative. I believe he is an attorney, isn't he?

Q. For $5,000? A. Yes, sir. He is an attorney, isn't he? I think he is an attorney. I believe it represented his fee.

Q. Was it represented to you what type of services he performed? [1,510] A. Legal services.

Q. In connection with what? A. I didn't inquire.

Q. All right. Did you see any other large figures such as that, that you put under Administrative? A. I have no immediate recollection. I'll be happy to look for you.

Q. All right. We will pass over that for the time being. Now, sir, do you have indicated or entered a column over here, "Recreation Center"? You show a total for that purpose of $191,670? A. Yes, sir.

Q. Can you tell the Court and jury how those figures were used, based upon what the books and records indicated to you? A. These amounts represented disbursements from the Voluntary Political Fund. Of the $191,000, if I recall correctly, $125,000 was represented by two checks transferring funds. The other amounts represent the monies advanced at various times, times up there to buy land and to pay contractors, and there was also some money spent for the political party, I believe, to pick their candidate at that time, and the money was paid for it and paid up there, and we included that part in there too.

Q. All right, sir. Sir, did the records indicate whether or not the title to this property up there,—you say "up there." [1,511] I assume you mean up at Clarksville? A. Yes, sir.

Q. ——that the title of that property up there was made in the name of the Voluntary Fund, Incorporated? A. I did not examine the title at any time. We also prepared, at Mr. Nangle's request, the records of the Voluntary Fund, Inc., which is a not for profit corporation, which took title to this particular property up there. That is, the Voluntary Fund is not the Union. It is a not for profit

corporation organized under Missouri law, and that organization took title to the ground.

Q. Now, is this Political Fund, Inc., incorporated? A. No, it is not Political Fund. It is Voluntary Fund.

Q. Or the Voluntary Fund, Inc.? A. Right.

Q. You say that was created under the Missouri corporation not for profit statutes? A. Yes, sir.

Q. Now, then, where did all of the assets that went into that corporation come from? A. This money, $191,000, came from the Voluntary Fund.

Q. Yes, sir. A. At a later date, the Welfare Fund purchased a portion of the land and building from the Voluntary Fund, Inc. They [1,512] paid some $65,000 to Voluntary Fund, Inc. The Welfare Fund acquired a part of the real estate from the Voluntary Fund, Inc.

Q. You say a part of the real estate? A. Yes, sir.

Q. And the rest of the real estate is still owned by the Voluntary Fund, Inc.? A. As far as I know.

Q. Part of it is owned by Voluntary Fund, Inc. and part of it is owned by the Local's Welfare Fund? A. Yes, sir. We do not examine the books of the Welfare Fund, but two checks totaling some $65,000 was received from the Welfare Fund by Voluntary Fund, Inc. for a portion of the real estate. Now, we didn't see the transfer of title, but that was the purpose of it. We compiled the figures of cost which were used to determine the amount that they should pay.

Q. Yes, sir. Now, in connection with your conversations and your advice as to how to determine the figures that went into the recreation center, were you told the purposes for this center? A. Not specifically. I can give you my general understanding. I don't know who told me, and I can't say for sure.

Q. Let me ask you this, specifically, sir: Were you told, in connection with setting up the books and making the

entries, that this recreation center was for the benefit of the [1,513] Union members, members of 562 and their families? A. Well, I understood it was a dual purpose. It was going to be used for political purposes and for the members of Local 562, and that was the reason for the separation of the properties.

Q. Oh, I see. A. This is my understanding of it, Mr. Riddle. I don't know that anyone specifically told me this, and I can't tell you for sure where I got the understanding, but that is my general understanding.

Q. Well, then is it fair for me to summarize your testimony by saying that a part of the money that went into the recreation center came from the Voluntary Political Fund? A. Yes, sir.

Q. Through the conduit of the Political Fund, Inc. for the use and benefit of members of 562 and their families? A. No, I didn't say that. I'm sorry, sir. I don't think I said that, if I did, I would like to correct it.

Q. What did you say about that, and about its use, as far as you know it? A. I said as far as I understand, the property has been divided, a portion of the property to be used for the general welfare and benefit of the members of Local 562, and a part of the property is to be used for political purposes.

[1,514] Q. All right, sir. A. This is my understanding.

Q. All right. And the part of the property that is being used for, according to your understanding, for the benefit of the members, has been transferred to the Welfare. Would that be your—— A. This is my understanding; yes, sir.

Q. All right. And the rest of it is to be used for political purposes? A. On a general basis, yes. This is, again, my understanding.

Q. Well, sir, did anyone explain to you, either of these defendants, or Mr. Burke, or anybody representing them,

the reason for organizing the separate corporation? A. No, I don't think I have had any particular explanation of why they did it. I presume maybe to limit their liability. I don't know; for public liability, or whatnot.

Q. Now, sir, in going through the records, did you break down, per year, the amount that was generated from the collections out on the job or from the members? A. I did break—Will you restate that? I am not quite——

Q. Well, maybe I should restate it. Your figures, I believe, show a total collection of a million and a half, [1,515] approximately. A. A million four hundred eighty thousand.

Q. A million four hundred eighty thousand. Now, sir, did you determine how much of that was paid in '63, and how much was paid in '64, and so on? A. As segregated by the envelopes.

Q. All right. A. And to explain that answer, it was quite apparent that sometimes the collections made on the jobs were not turned in for two or three weeks, for a period of two or three weeks, and we have segregated by years on the basis that the collection sheets were segregated by years.

Q. All right, sir. A. I may have a December collection appearing in the following year. That is, a collection on the job in December may have reached in the office and been in a January, or even as late as a February envelope.

Q. Well, now, in your worksheets did you break them down by month? For example, in January of 1963, does your worksheet show how much was collected, based upon what you examined? A. As they are segregated by the envelopes; yes.

Q. Do you have your worksheets that give us those monthly collections, in front of you? A. I'll see. All right, sir.

[1,516] Q. All right. In January of '63,—— A. Yes, sir.

Q. How much? A. The total collections, as we found them in the envelopes, were $12,915, excluding $341 which were December collections and were put back with the 1962.

Q. All right. So in January it was $12,950, excluding—— A. 915.

Q. 915. All right. February of '63? A. The collections for February, or totals were $26,285.75.

Q. All right. And March? A. $33,447.70.

Q. All right. April? A. $23,736.50.

Q. May? A. $26,554.75.

Q. June? A. $33,183.65.

Q. July? A. $12,154.

Q. August? A. $15,442.

Q. September? [1,517] A. $15,856.

Q. October? A. October, the schedules seem to be missing. Let me see something here.

Q. Well, let's pass October then for now. November? A. There may have been none. I don't know. I'd have to check to see.

November is $38,233.25.

Q. December? A. $48,499.90.

Q. All right. Now, begin for '64, and give us for each one of those months, if you can, without my asking you the questions, to save some time. A. January, $24,516.75.

February, $19,192.50.

March, $27,256.

April, $20,986.50.

May is $4,553.75.

June is twenty-six eight thirty-two twenty-five.

Q. What did you say the May figure was? A. May figure is $4,553.75.

The Court: Four?

The Witness: $4,553.75.

Q. (By Mr. Riddle) June? [1,518] A. $26,832.25.

Q. July? A. $32,260.90.

Q. August? A. $31,562.95.

Q. September? A. $11,279.25.

Q. October? A. $40,151.13.

Q. November? A. $15,052.22.

Q. December? A. $36,669.

Q. All right. For '65 now. Sir, before you get into that, the one month of May, 1964, you indicate that the payment there was four thousand, which is substantially less than the other months. Did you make a check or find any reason for that substantial decrease for that month? A. It so happens I didn't work on the particular month, and I did nothing about it.

Q. All right. A. The envelopes are there.

Q. All right. '65. Can you give us those by months? A. I think I have this summarized somewhere else that [1,519] might save us time. No.

January of 1965, $29,208.

February of 1965 is $27,071.75.

March is $28,895.48.

April is $30,430.75.

May, $28,194.88.

June, $35,221.75.

July, $37,257.

August, $35,353.35.

September is $39,802.75.

October is $39,417.50.

November is $39,471.55.

December is $45,634.25.

Q. All right. '66? A. January, $38,404.25.

February, $28,383.75.

Q. March? A. March is $33,822.50.
April, $34,923.95.
May, $22,678.25.
June, $1,882.
July, nothing.
August, $539.50.
September, nothing.
[1,520] October, $16,033.25.

Q. All right. Go ahead. The rest of the year? A. November, $33,789.50.

Q. December? A. December, $28,797.75.

Q. Sir, for the period of time July, August and September, did you make a determination as to why there were no receipts during those months?

Mr. Daly: We would object to this, Your Honor, and ask that question be stricken and the jury instructed to disregard it, and a mistrial be declared.

The Court: No. That will be overruled. It would go to the qualification.

Q. (By Mr. Riddle) Did you make a determination as to why there were no receipts for those months? A. Again, I understood that the collection were—or contributions to the Fund were suspended during this period.

Q. Now then, sir, from your examination of these records, did you run into any receipts being received into the Callanan Gift Fund?

Mr. Daly: I object to that, Your Honor, and ask it be stricken, and the jury instructed to disregard it.

The Court: No. He may answer.

The Witness: We did not examine that Fund.

[1,521] Q. (By Mr. Riddle) You ran into records there, I assume, relating to it? A. I saw some records there. I

saw some cards. We did not examine the records, in fact didn't inspect them.

Q. I see. Sir, when did you understand that the collections into the Voluntary Fund were suspended? As of what date? A. I really don't recall the date.

Q. Do you know the date that they were resumed? A. Specifically, I don't know. I know collections were made in October.

Q. All right, sir. I notice that there were no monies received into this fund in July, and none in September, but that in August there was $539 received. Can you account for that? A. Without specifically looking, I assume this was a collection of some prior period that came in late. I'm not sure.

Q. A back collection? A. Probably.

Q. Yes, sir. You continued to work it out month by month for the year 1967, did you not? A. Only through September.

Q. Through September. Do you have those figures there, for the record? [1,522] A. Yes, sir. For January, $23,770.55.

February, $23,904.

March, $26,405.75.

April, $20,287.75.

May, $31,800.75.

June, $31,324.

July, $30,644.75.

August, $31,860.10.

Q. All right. A. September, $28,311.90.

Q. All right. Sir, are you familiar with the form that is prepared annually and submitted to the United States Department of Labor? A. Form LM-2?

Q. Yes. The form LM-2. A. We prepared it for the Union.

Q. That has been one of your services to it? A. To Local 562.

Q. Yes. Now, sir, in the preparation of these forms, what monies received did you account for? A. Local 562.

Q. All right. Can you identify the funds or the sources that you did account for? A. From the receipts of the Secretary-Treasurer, which [1,523] included the members' dues, the initiation fees, the daily work assessments, interest collected, possible refunds of expenses.

Q. Yes, sir. Sir, under Item No. 49, there appears on one of the forms the question, "Monies received from members for disbursement on their behalf." Are you familiar with that provision? A. I think I know what you are speaking of; yes. May I have one of the forms?

Q. Yes.

(Mr. Riddle handed form to the witness.)

A. Item 49; yes.

Q. Now, where on these forms have you reported or made reference to the million and a half dollars that was received from members and out-of-towners into this Political Fund? A. No, it was not part of the Union's funds.

Q. Just one minute, Your Honor.

The Court: All right.

Q. (By Mr. Riddle) Sir, are you familiar with the By-Laws and Constitution of the Local? A. I've read them, Mr. Riddle. When you say "familiar" I wouldn't attempt to remember what is in them.

Q. Well, sir, to your knowledge, is there any limit on the amount of special assessments that the membership of Local 562 could vote on themselves? [1,524] A. In the By-Laws is there a limit?

Q. Yes. A. I don't recall. I can't remember it. I recall that they vote on the amount that they will—on the

amount that they will pay. Whether there is a limit in the By-Laws, I do not recall.

Q. Sir, referring to Government's Exhibit 207, which indicates that the regular assessments from the Union into the Fund, that your company audit amounted to approximately $1.50 for an 8-hour day? A. For the certain years; yes, sir.

Q. That would be from years 1-1-66 up to date, apparently? A. (Indicating yes.)

The Court: Answer. Don't shake your head.

The Witness: Oh, yes, sir.

Q. (By Mr. Riddle) From your knowledge and information about the Union, about its By-Laws and its records, and whatever source of information you have, do you know of any prohibition against increasing the assessment up to even $2.00 a day? A. I do not know whether there is a limitation in the By-Laws or not. I'd have to refresh my memory, sir. I don't recall it. As I understand it, the members could vote anything they want. I don't recall.

Q. Yes, sir. Sir, I will hand you what's—well, let [1,525] me approach it this way. Section 2.05 of the Constitution and By-Laws of Local 562, are you familiar with the section I have just referred to, which reads as follows:

"We recognize that the interests of this labor organization are not limited to matters of organization and collective bargaining or even to those matters and things additionally set out in Sections 2.01, 2.02, 2.03, and 2.04,——"

The Court: Slow down a little.

Mr. Riddle: (Continuing) ——"but extend to all types of economic, social and political activities, including, but not limited to, activities of a cultural, civic, industrial growth, legislative, political, fraternal, educational, charitable, welfare and social nature which further the inter-

ests of this organization and its members directly or indirectly."

Are you familiar with that? A. I have read it, Mr. Riddle. As independent accountants and auditors, it was so much verbiage that had no particular place in our audit. This was a matter of what the members wanted to put into our By-Laws and did not affect the financial.

Q. I see. Now, sir, in connection with the charitable accounts, let me ask you about these specifically. If you had run into an article or an item in the regular books, that is, where this dues and assessments come in, but that appeared to be a payment of $100 to St. Jude's Hospital, would you have [1,526] classified this as a charitable figure? A. I would; yes, sir.

Q. And showed it as a proper expenditure on your audit of those accounts? A. Yes, sir. If the check were endorsed properly, why not?

Q. What about the contribution to the Dismas Clark Foundation? A. We consider that to be a local charity, yes, sir.

Q. Yes, sir. And would have been a proper expenditure of the Union funds? A. Yes, sir.

Q. And what about to the Alexian Brothers Hospital? A. We would consider it to be proper if the Board of Trustees approved it.

Q. What about St. Louis Variety Club? A. That is a charitable fund-raising organization. If the Board of Trustees had approved it, we would not take exception to it.

Q. And the Boys' Club of St. Louis? A. Yes, sir.

Q. Vesper Gospel Chapter? A. Same.

Q. Sherwood Day School? [1,527] A. Yes, sir.

Q. Then the payment to the Teamsters Annual Charity? A. That is a fund-raising function; yes, sir.

Q. And you would consider that a proper expenditure of the Union's regular funds? A. If the Board of Trustees had approved it, we would find no exception to it.

Q. American Cancer Society? A. Same.

Q. Let me ask you, sir, if in going over the books and records of the Political Fund, if you did not find these type of donations, the one, well, specifically, these donations and contributions paid from those funds when you went through the records in the last few weeks? A. You stated did I not find them?

Q. Yes. A. Did I find them? Is that your question?

Q. Yes. A. We found disbursements to St. Jude's. I am sure we found them to the Variety Club. I am sure we found them to the Teamsters Variety Club, or whatever they call it, that fund-raising function. I am sure we found those. I can't specifically remember Sherwood. It was the Sherwood School, you see.

[1,528] Q. Yes. A. We may have. I don't recall specifically.

Q. Yes, sir. Well, specifically, of the entire list totaling $106,728 that you have shown as civic and charitable contributions from out of the Political Fund, do you recall a single one of those that you would not have approved as being a proper and legitimate expense of the Union from out of its regular dues and assessment proceeds? A. No, I recall none. Again, if the Board of Trustees had approved it—it is not up to us to say how the Union may contribute its funds, and if these had been on the Union's books and approved by the Board of Trustees, we obviously would have had no fault with it.

Q. Yes, sir. But these $106,000 are the type that you wouldn't have any serious question about at all? A. I would not have questioned them if the Board of Trustees had——

Q. Yes, sir. A. In this particular Union fund, I think they gave an iron lung. They bought a trailer for the scuba divers' organization, this lifesaving thing. They bought a wheelchair for someone. These particular items, why we would want to be sure they were what they said they were.

Q. And if they were, it would have been a—— [1,529] A. If the Board of Trustees had approved them, we could not have taken exception to them.

Q. And you would have considered it a proper and legitimate expense of the Union? A. Yes, sir.

Q. Yes, sir. And those monies then would have been entered on the accounts and reports that you filed, or on the reports that you filed with the United States Department of Labor? A. Yes, sir, I think we itemized them on the LM-2.

Q. And those expenditures you would have included, had it been in the regular funds, you would have included on your annual audit of the Union's records? A. Yes, sir.

Q. And what about the expenditure for these recreational facilities up at Clarksville? Had they appeared on the books and records of the Union? A. We would have looked to see that they were authorized in the minutes, and we would have looked to see that they were approved, again, by the Board of Trustees. In expenditures of this nature, and involving this amount of money, we go beyond a mere representation. We attempt to see that there is an authorization for it as well. The minutes of the—we would have expected the minutes of the Union to include such an authorization.

[1,530] Q. But the type of expenditure, namely, for recreation area, would have been approved and legitimate and proper so long as it had been approved by the directors and the management of the Union? A. I think in this particular case we might have gone to their By-Laws and

their others to see whether they might have gone beyond their scope, again, for this type of expenditure I am talking about, and this volume. We probably would then have asked counsel for approval of it to be sure they were within their proper rights in making such a contribution.

Q. And going down your list, under the heading "Administrative," did you run into anything under that item that totals $192,000? A. Well, once more, Mr. Riddle, this was——

Q. That you would not have approved as a legitimate and proper expenditure from the Union funds? A. I won't answer that affirmatively, because, once more, we went through this rather hurriedly, and with the aid of Mr. Lawler and Mr. Callanan, and I don't think we gave them quite the same consideration we would have in the audit of our Union records.

As I told you before, this was done rather hurriedly at the end of our examination, and it is a catch-all classification.

[1,531] Q. Sir, let me ask you if you recall a single expenditure that you categorized as Administrative that you would not have approved in your regular audit of the Union funds? A. I don't recall any; no, sir.

Q. Assuming, of course, the trustees approved it. A. If the trustees approved them.

Q. Yes. Now, sir, under the "Aid to Members", that $10,000 item, had that expenditure showed up as payments out of the regular Union dues, would you have approved that as a proper and legitimate expenditure of Union funds? A. I believe so.

Q. Yes, sir. A. Yes, sir. In this particular fund, I think the card authorized such also.

Q. I am talking out of expenditures that you saw there that you labeled "Aid to Members." Had they appeared, those same type expenditures, out of the Union funds,

you would have approved them as being a proper and legitimate expenditure of Union monies? A. If we verified them, if they had been approved by the Board of Trustees, we would have so classified them; yes, sir.

Q. With respect to the column that you have labeled, "Political" that totals $867,000—— A. I don't think we would have approached any part of that.

[1,532] Q. Yes, sir. A. Out of the Union funds.

Q. Yes, sir. That's because certainly those payments were for federal candidates? A. Some were. Of the total, I wouldn't attempt to make an estimate, but it was not the majority of it, I'm sure.

Q. Yes, sir. Then, sir, in all columns that you are talking about, with the exception of the Political, had they appeared as regular Union expenses approved by the trustees, you as an auditor and C. P. A. would raise no question about it? A. If we were satisfied as to the approval of the trustees, the authenticity of the disbursement, and as I said, with the exception of the last column, I think we would have given—the size and amount of nature—we probably would have gone to counsel to be sure they had the authority to so make it. Outside of that qualification, we would have claimed them as normal, proper Union expenditures if the Board of Trustees had——

Q. Yes, sir. But on the item "Political" you would have had to go to counsel to know about that, would you? A. No, sir. We are familiar with the fact that unions do not make contributions out of their union dues and assessments.

Mr. Riddle: Yes, sir. That's all.

The Court: Any redirect examination?

[1,533] **Redirect Examination.**

By Mr. Nangle:

Q. Mr. Shelton, when Mr. Riddle was examining you before, you kept trying to make an explanation about your examination of the receipt records, particularly during the early years. Did you test, or perform any tests to determine whether the receipts in the early years were accounted for, Mr. Shelton? A. We made what we called a continuity test. We labeled a job by name, and possibly the name of the collector, and we attempted to see that there was a continuity of the sheets from week to week through the two years to see that we had them all.

Q. I see. Had you intended to perform this test on the later years as well, Mr. Shelton? A. Yes, sir. I wanted to go beyond that. I wanted to also take specific individuals and see if—I wanted to go to the Welfare office and see if were getting reports from all of the jobs, and would have gone further to determine why we were not, why they were not included. This was time prohibitive. I mean with the time permitted for our examination, we just couldn't make it.

Q. Now, in the record keeping for a voluntary, for voluntary contributions such as these, you do have the problem in other charities, Mr. Shelton, do you not, of whether or not all the receipts to the various persons who are collecting are [1,534] accounted for in the books; is that correct? A. You have that in any charitable organization. That depends upon collections from individuals to be collected by individuals, as to whether the individual is properly listing the total amount collected from each person; whether they are including the amount collected from each person properly. Whether they are omitting the names of those people, as well as the amount;

Q. Now, in these later years, of course, there were no records at all about the individual persons who were contributing to this fund; is that correct, Mr. Shelton?

Mr. Riddle: I will object to that as being a leading and suggestive question.

Mr. Nangle: I will rephrase the question.

The Court: All right.

Q. (By Mr. Nangle) Mr. Shelton, were there any records in the later years of the names of the individual contributors and how much they contributed for any period of time? A. Each of the sheets shows how much is paid each week, or is collected each week from the individuals, distinguishing the first two years from the later years. The first two years' postings were made to accumulate the amount collected from each contributor. This was discontinued and did not continue after December 31, 1964.

[1,535] Q. I will ask you, Mr. Shelton, if you are familiar with the fact that Mrs. Stieferman stopped working for the Voluntary Fund in about April of 1964? A. That's my understanding; yes.

Q. Now, there was some jumping around of the figures in 1964, Mr. Shelton. Is it possible that was because of her delay in——

Mr. Riddle: I want to object to that as being a leading question.

The Court: Yes. Don't lead him.

Q. (By Mr. Nangle) Well, let me ask it this way. During 1964, were the collection sheets posted regularly, if you recall? A. We weren't present, so I can't answer. I do know the continuity of their posting.

Q. Well, your accumulation dates probably would—— A. Just a moment, and I think we can—as I understand

your question, was there a difference in the regularity of posting in '64 than in prior periods?

Q. Right. And later periods? A. Not specifically. The postings in 1963—wait till I find that sheet—were made at the beginning of the period they were made, oh, approximately weekly. Later in the year of 1963, this was reduced to possibly two to three times [1,536] per month. In '64, the postings in the latter part of the years were made approximately two to three times a month. The specific dates you mentioned——

Q. Look at the month of May, Mr. Shelton, if you will, please. A. May postings were, there were only two postings in May of '64, and then it jumped until June 21st of '64, and then to June 28th of '64. It's difficult to accumulate exactly how the sheets were accumulated before they made their postings. There is another thing that is somewhat difficult. The postings indicated on this summary sheet are a summary of the postings which were made to the individual collection sheets of the contributors.

Q. Yes, but your associates checked the continuity of these collections during this period of time? A. We do not know what date they posted them, is what I am trying to say.

Q. I understand. Now, Mr. Riddle asked you some questions about this category, "Aid to Members." Was there any certain amount that was paid to members during 1963, if you recall, to each and every member? A. No. These were a relatively few number of people. There were odd amounts. I think in a couple of instances they paid, the checks were issued other than to the direct recipient. [1,537] I may be mistaken. I believe this is the classification where they may have paid some bills for some member. Somebody, apparently they were sick, indigent, needed some help.

Q. For some certain purpose? A. For some purpose.

Q. Now, on your direct examination, Mr. Shelton, Mr. Riddle asked you a question about the use of the Recreation Center by Union members.

The Court: This was cross-examination. Go ahead.

Q. (By Mr. Nangle) On Mr. Riddle's cross-examination, Mr. Shelton, he asked you a question about the use of the Recreation Center by Union members. Were you ever told that non-union members working within 562's jurisdiction were prevented from using these facilities? A. I was never told who would, or could, or could not use them. I assume that the card——

Mr. Riddle: I want to object to what he assumes, Your Honor.

The Court: Be sustained.

Mr. Riddle: And ask that be stricken.

The Court: It will be stricken.

Q. (By Mr. Nangle) I believe on cross-examination Mr. Riddle also asked you some questions about the Voluntary Fund, Inc. You did not form this not for profit corporation [1,538] yourself, did you, Mr. Shelton? A. No, sir. I understood you formed it.

Q. Your figures, Mr. Shelton, go through September of 1967. That's just a part of the year that—could you tell me the reason for your ending the period at that period of time? A. The grand jury subpoenaed the records of the regular Union fund, and apparently the Voluntary Political Funds through September of 1967, and that's the extent of the records which were returned and which we examined.

Q. I see. Now, Mr. Riddle asked you certain questions about your breakdowns of these disbursements into the various categories, and you stated as far as the Recrea-

tion Center, that you would probably have wanted to consult with attorneys for the Union before you would approve those as being proper union expenditures. A. Due to the size and scope, I would have wanted to be assured that these were expenditures of the regular union, and within the By-Laws and authority.

Q. As far as the administrative, certain administrative expenses and certain charitable contributions, is it not possible when you got into the detail of that——

Mr. Riddle: I want to object to that as a leading and suggestive question also, Your Honor.

[1,539] Mr. Nangle: I will rephrase the question, Your Honor.

The Court: Very well.

Q. (By Mr. Nangle) You did not have occasion to go through the administrative and civic and charitable contributions in enough detail to determine whether that would have been necessary, did you, Mr. Shelton?

Mr. Riddle: That is a leading and suggestive question.

The Court: I think it is leading, Mr. Nangle. It is your witness.

Q. (By Mr. Nangle) Mr. Shelton, the amount of time that you spent on examining the records, how did that compare with the time that you spent comparing these breakdowns? A. Oh, the breakdowns were done in probably, oh, the classification, the summaries, the aggregate time involved by myself and my men probably did not exceed twenty-five hours, total.

Q. And could you estimate, could you give us some idea of how much time you spent examining the Voluntary Fund's records in total? A. In total?

Q. Yes. A. I haven't checked the total time reports on it. I would say the total time involved is going to be approximately, oh, in excess of five hundred hours.

Q. I see. May I have one moment, please, Your Honor? I [1,540] have no other questions Your Honor.

Mr. Randall: Your Honor, I'd like to ask a few questions.

The Court: All right.

Redirect Examination

By Mr. Randall:

Q. Sir, did you and your associates in your firm prepare all parts of the LM-2 reports, or were parts of them prepared by someone else? A. We prepared all the financial data, and then they conferred with Mr. Craig, and he either made additions to the page 1 asking for certain change data, and other matters involving the organization's By-Laws, and items of that nature.

Q. Who is Mr. Craig? A. Mr. Craig is an attorney here in the City who——

The Court: I don't want to limit you on this, but we went through it. He couldn't remember the entire firm name. He said Wiley, Craig.

Q. (By Mr. Randall) What I wanted to know, was he the attorney? A. He was the attorney. Your Honor, I have no doubt about it.

Q. And the local aspects of the LM-2 were prepared by Mr. Craig, the attorney? [1,541] A. That is right.

Q. And you testified, said,—you testified when you had some doubt as to the legality of the expenditure by the Local, you consulted with an attorney, and you meant Mr. Craig; am I correct in that? A. That is right.

Q. And do you know whether or not Mr. Craig wrote the By-Laws and Constitution of the Local? A. I do not.

Q. But any interpretation of the By-Laws and Constitution you referred to Mr. Craig, the attorney for the Local? A. That is correct; yes.

Mr. Randall: That is all.

Mr. Daly: I have no questions.

Mr. Riddle: I just have an additional matter on recross.

Recross-Examination.

By Mr. Riddle:

Q. Sir, is it your testimony that from the records down at the Union hall, that a person, you, or someone else, Mr. Callanan, or Mr. Lawler, Mr. Seaton, could go to the records that were available and determine if any given person was paying money, and if so, how much? [1,542) A. You mean the Local 562?

Q. Yes. A. Yes. They kept cards showing how much was collected in dues, how much was collected in work assessments, and how much was collected for initiation.

Q. And also how much was collected—I don't want to get you confused—I am talking about the records of the Union and also of the Fund. A. Well——

Q. My question is whether or not from the records of the Fund, plus the records of the Union, you could determine if any member paid for any work period, and how much he paid into the Fund voluntarily? A. Into the Voluntary Fund?

Q. Yes. A. For the first two years, postings were made to accounts for individual contributors. After that, they were discontinued through 1964. We are involved in '63, 4, 5, 6 and 7. For 1963 and 1964, a ledger sheet was maintained to show the collection for each contributor. After that the Voluntary Fund did not maintain a record of amounts collected from each contributor. The regular Union has always maintained records of the amounts paid in for dues, assessments, and initial initiation fees.

[1,543] Q. Sir, I don't believe I made my question clear. Say in February of 1966, based upon the records as you

are acquainted with them, could you go down there and determine whether John Jones, a member of 562, had paid into the Voluntary Fund for the previous week? A. There is no record which would show such, to my knowledge.

Q. That would show such a collection? A. Only those individual sheets would show.

Q. This is what I am asking you. A. Oh.

Q. Do you consider those records? A. Well, yes, sir. I possibly misunderstood your question. I thought you meant is there a record maintained to show how much each individual contributor paid in on any particular date. Yes, you can go through those records and you can determine who paid any week. It's a long, laborious job, but you could determine it.

Q. Well, the only thing you'd have to do is pick up the returns and reports that are filed this week and look at them? A. But they are not all filed simultaneously, Mr. Riddle. Some of them come in—from our observation, some of them came in sixty days late. In addition to that, the individuals who mailed their contributions, or the individuals who came in person [1,544] and went to the office of the Political Fund and made payments, they are on a separate listing and sheets.

Q. So that you could determine by looking at it in 66, '67, '64, '63? A. If you wanted to look at each individual sheet each day, you can see who contributed that day.

Q. If Mr. Callanan wanted to look and see, he could go right there and look? A. I assume so; yes, sir.

Q. Yes, sir. Now, sir, in checking the records, did you make a determination as to how this cash that was received was deposited and handled? Cash that came into the Voluntary Fund? A. They made a record of their deposits as they mailed them, and there was a portion of the period they made a record of the transfers to the safe deposit box in currency.

Q. Yes, sir. A. That later on apparently was discontinued. We did do this, Mr. Riddle. We determined that all of the cash collected for the entire period eventually was either disbursed or went into the bank account.

Q. Now, sir, are you saying now that you determined that all cash collected—— A. As represented by the collections.

Q. By the books? [1,545] A. Yes.

Q. You are not telling them that all the cash was collected on the jobs? A. No. I think we discussed that, yes.

Q. Did you find on occasions there was in excess of a hundred thousand dollars cash deposited in the bank account at one time? A. One time. That is correct; yes, sir.

Q. And that for a period of time this amount of cash was in safe deposit boxes? A. Yes, sir.

Q. And who was—Do you know who had access to this safe deposit boxes? Did that show up from your records? A. I didn't look for it. I don't know. The money was no longer there. There was no particular occasion to worry about it.

Mr. Riddle: I have nothing else to ask him.

The Court: Anything else?

Mr. London: One question, if I might, Your Honor.

Redirect Examination

By Mr. London:

Q. Mr. Shelton, Mr. Riddle has asked you about comparing Union and Welfare records with the Fund records to determine who had and who had not paid. Do you remember that question, sir? [1,546] A. I think so.

Q. Did you make an examination of these records, sir, to determine who had or who had not paid over the years in question? A. We were requested to make an examination

to determine the names of individuals who were irregular contributors, and determine if a specific list of seventy-five names had ever made contributions.

Q. Did you make an estimate, sir, of how much time it would take you to make a determination of who had and who had not contributed to the Fund over the years in question? A. Not for the years in question. We estimated, to make a test just for a six-month period would have required approximately eighty days' time; eighty man days' time.

Q. And this would be a test for just picking seventy-five names? A. Seventy-five names to find out. Also, the eighty days. My total test was 106, I believe, for the two functions.

Q. If you wanted to make a complete determination for some thousand members over a four-year period as to who had and who had not contributed into the Voluntary Fund, about how long would that take you, as a C. P. A.? A. I hate to estimate it, sir. I'd have to give it more thought, but it would take a very considerable time. The only satisfactory way to do it would be to re-accumulate by [1,547] individual names, and I want to add that there is another great difficulty in even doing that. We found over the years where stewards were previously, prior to the days of checkoff, were collecting dues from members. We might find one man written and described in six different manners. He might be a Red Smith, a Bud Smith, a Bob Smith, and it was very difficult over the period of time when we were not using, prior to the time of checkoff, we used to end with a great list of names that we would have to run down and find out who they were, and many times we found one man described six different ways. You would have to eliminate all of those items also. Before you did, it would be a tremendous job.

Q. So that what you are saying that you did estimate for a test run of seventy-five names for six months would take

you about eighty days of work? A. Well, I think just to look for seventy-five names through six months, I estimated that we could probably do—to locate or not locate seventy-five names for six months would probably take a twenty-five days, twenty-six days, I believe. The other test I said would take at least eighty days.

Q. Making the same determination for a thousand members for over four years would take considerably more? A. Yes, it would take a great deal more.

Mr. London: Thank you.

[1,548] Mr. Riddle: I have just one more question.

The Court: O. K.

Recross-Examination.

By Mr. Riddle:

Q. Sir, these forms and these sheets that you have over here identified representing the collections into the Political Fund? A. Yes, sir.

Q. They are prepared by and large by stewards, or people out in the field A. They are labeled "foremen" on the sheets.

Q. Yes. Now, back before the checkoff began, do I understand your testimony to be that you collected those forms and sheets and collections that the steward made out on the job? A. They were sheets showing how much they collected from each individual member on a job, and they were collected by the stewards.

Q. These are the regular dues and assessments? A. Regular dues and assessments.

Q. On sheets by the stewards out on the job? A. Yes.

Q. Now, did those collection sheets for the regular assessments and dues, did they compare and contain about the same information that these forms here have on the Voluntary Fund? [1,549] A. As I recall it, they were sim-

ilar. They showed the names of the men and the name of the steward and the name of the job.

Q. And how many hours worked? A. And the amount; well, sometimes just the amount collected, sometimes the amount of hours worked. Sometimes the days worked.

Q. They were identical to these, with the exception of this heading on the top? A. If you say so.

Q. Well, isn't that your recollection of it? A. I would say they were similar; very similar.

Q. One had "Voluntary Political Fund" and the other had "Pipefitters 562 Assessment Sheet," or some such thing? A. If you say so, I accept it.

Mr. Riddle: All right.

The Court: Anything else?

Mr. Riddle: That is all.

The Court: All right. You will be excused.

Members of the Jury, we will have our morning recess. Bear in mind the admonition I have given you heretofore.

(Following a brief recess, the further following proceedings were had before the jury:)

Mr. London: May we approach the bench, Your Honor?

[1,550]. The Court: Sure.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. Nangle: Your Honor, at this time the defendant would like to renew their previous motion for continuance to permit Mr. Shelton to complete his work on his records. It is apparent from his testimony had he been

able to complete his records, that the other information that is needed in this defense would have been available to us, and if a continuance is granted to us now, this information could be available in a period of thirty days or sixty days, Your Honor.

The Court: You mean I am to continue the trial?

Mr. Nangle: That's right, Your Honor.

Mr. London: Possibly after discussion with Mr. Shelton, we feel it could be a less period of time than Mr. Engle has indicated, and we feel the time is needed in view of his testimony that he was unable to complete all the work in order to give all the testimony he listed.

The Court: Certainly there is insufficient record made here for making such a continuance. It will be denied.

(Thereupon the trial was resumed before the jury as follows:)

The Court: Call your next witness.

[1,551] **LESTER W. CAJACOB,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, please, sir. A. Lester Cajacob, C-a-j-a-c-o-b.

Q. Sir, were you a member of Local 562? A. Yes, sir.

Q. Are you now retired, sir? A. Retired.

Q. While you were a member, sir, did you have occasion to contribute to the Voluntary Fund? A. I did.

Q. Were the contributions that you made into that Fund voluntary, sir? A. Absolutely.

Q. And, sir, while you were still working, did you have occasion to attend the meetings of the Voluntary Fund? A. Yes, sir.

Q. And were they separate from the regular Union meetings?

Mr. Riddle: I want to object to that as being leading and suggestive, Your Honor.

The Court: Be sustained.

Q. (By Mr. London) I will rephrase it. Did you attend [1,552] meetings of the Voluntary Fund, sir? A. Yes, sir.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. You paid your dues and assessments, I assume? A. Yes, sir.

Q. They were paid voluntarily also, weren't they? A. Dues and assessments?

Q. They were paid voluntarily? A. No, sir.

Q. Did they force you to pay them? A. That is compulsory, dues and assessments. If you remember, you have to keep the organization going.

Q. You didn't pay them voluntarily? A. I paid in the voluntary, but not dues and assessments.

Q. Oh. You don't think that you paid that voluntarily? A. No.

Q. Your dues and assessments? A. Oh, dues and assessments, yes.

Q. You paid voluntarily? A. It is not the Voluntary Fund though that is dues and assessments, if I——

Q. But you paid it voluntarily, didn't you? [1,553] A. Are you talking about the Fund or——

Q. No, I am talking about your dues and assessments. A. Oh, absolutely.

Q. You paid into the Fund voluntarily? A. Yes, sir.

Mr. Riddle: That's all.

The Court: Is that all?

Mr. Randall: No further questions.

The Court: Step down.

(Witness excused.)

WILLIAM J. MURPHY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Would you state your full name, please? A. William J. Murphy.

Q. And where do you live, sir? A. 75 Willmore Road, St. Louis, Missouri.

Q. And, Mr. Murphy, are you a member of Pipefitters Local 562? A. Yes, I am.

Q. How long have you been a member? A. Twenty-seven years.

[1,554] Q. What is your present job? A. Powers Regulator Company; general foreman.

Q. Are you now contributing to the Pipefitters Voluntary Fund? A. No, I'm not.

Q. How long has it been since you made a contribution? A. I'd say almost two years; a year and a half, two years.

Q. Did you contribute prior to that time? A. Yes, I did.

Q. You contributed—by what means did you make your contributions? A. By checks.

Q. And who did you give them to, send them to? A. I mailed them to Pipefitters Voluntary Fund.

Q. And about how often did you send in a check? A. Every six months.

Q. Did you contribute the full amount, or did you do it intermittently? A. Intermittently; I was always a little behind.

Q. Now, since you have quit contributing, has anyone ever said anything to you about the fact you are not contributing? A. No, sir.

Mr. Randall: You may inquire.

[1,555] **Cross-Examination.**

By Mr. Riddle:

Q. What caused you to all of a sudden stop paying? A. Well, I never was much for politics, and after President Kennedy was assassinated, my interest waned more, and finally I decided, after seeing some of the endorsements of the Fund were against my principles, it didn't make sense to contribute to one and vote for the other.

Q. So you just stopped? A. I just stopped.

Q. Now, who is your supervisor? A. I am the head fitter in the shop.

Q. Head fitter in the shop? A. Yes.

Q. How many other pipefitters are in that shop? A. Well, it varies. This time we have five; sometimes it goes as high as twenty, twenty-five.

Q. Do you make collections from these fellows? A. No, sir.

Q. Have you ever? A. No, sir.

Q. Are they paying into it? A. As far as I know, they are.

Q. Do you know Mr. Callanan? [1,556] A. Yes, sir.

Q. Have you ever explained to him why you stopped? A. He never asked.

Q. Did you ever explain to him? A. No.

Q. Did you ever explain to anybody else? A. No, sir.

Q. Never explained to anybody else—— A. My wife.

Q. ——before you got on the stand today, as to why you stopped? A. No.

Q. The very first time that you ever said the reason you stopped is because you didn't want to support the candidates? A. Yes, sir.

Q. And for the first time? A. As far as I know.

Q. Outside of your wife, you are telling that from the stand here this morning? A. Yes, sir.

Q. You didn't tell it to any of these lawyers before you came here? A. I believe I did; yes.

Q. Which one? [1,557] A. I don't know his name.

(Mr. Randall stood.)

Q. (By Mr. Riddle) Where did you go to tell him that? A. At the hall.

Q. When was this? A. Thursday evening.

Q. Did you go to the hall for a particular reason? A. For that reason, I imagine.

Q. For that reason? A. Yes, sir.

Q. Well, now what do you mean "for that reason"? A. As to why I hadn't paid into the Voluntary.

Q. Who called you and asked you to come? A. One of the business agents.

Q. Which one? A. Virgil Walsh.

Q. Virgil Walsh? A. (Indicating yes.)

Q. He called you on the phone? A. Yes, sir.

Q. And what did he say to you in this conversation? A. To be at the hall at 7:00 o'clock this evening.

Q. Did he tell you why you were supposed to come down there? A. No, sir.

[1,558] Q. How many others were at the hall that evening, that Thursday? A. Oh, quite a few; thirty, forty.

Q. When you got there, did you voluntarily state to the people there that you had stopped paying, and the reasons? A. Yes, sir.

Q. You told everybody at the hall? A. No, sir. Just this one gentleman here.

Q. Just one of the attorneys? A. Right.

Q. Did he tell you how he knew you had stopped paying? A. No, sir. We had had a meeting the evening before.

Q. What happened at that meeting? A. They asked for anybody who had not paid lately.

Q. Who all was at that meeting? A. General membership meeting.

Q. And when they asked that, you stuck up your hand? A. I went up forward after the meeting.

Q. How many others, besides you, went up? A. Oh, I don't know; quite a few.

Q. Were there others? A. Yes, sir.

Q. How many people were at the meeting? A. A thousand or so, I would say.

[1,559] Q. A thousand or so? A. Yes, sir.

Q. And out of the thousand, you were one that went up and stated that you hadn't been paying recently? A. Yes, sir.

Q. About how many other of you were there that fell in your category? A. What do you mean by my category?

Q. Out of a thousand, you said that some of—you and some others went up and told him that you hadn't been paying lately? A. There was a whole crowd around the

desk. I don't know who was up there for that purpose, or for any other purpose.

Mr. Riddle: I have nothing further.

The Court: Anything else of this witness?

Mr. Randall: I have no further questions. Nothing further.

The Court: OK.

Mr. London: May we approach the bench?

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. London: Your Honor, at this time we would again [1,560] request an instruction from the Court to the jury that there is nothing improper about an attorney interviewing a witness.

The Court: I am not going to tell them that.

Mr. London: We would like to make the request in view of the question on cross-examination, which would indicate there was some impropriety.

The Court: He answered. He had a perfect right to find out who he's talked to. I am not going to tell them that. I assume you are going to argue.

Mr. London: I can't hear you.

The Court: I assume that you are all going to make an argument in this case.

Mr. London: I don't know. I assume. I don't know about Mr. Nangle.

The Court: Well, I will assume at that time you will allude to it. I am not going to do anything about it. No.

Mr. London: Thank you.

(Thereupon the trial was resumed before the jury as follows:)

CORBAN MINTNER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

[1,561] Q. Will you state your name, sir? A. Corban Mintner.

Q. Where do you reside, Mr. Mintner? A. 3710 South Spring.

Q. And what is your business or your occupation? A. Right now I am retired.

Q. And prior to the time that you retired, what occupation did you follow? A. I was a fitter.

Q. And by that, you mean a pipefitter? A. Pipefitter.

Q. And did you belong to a local union, sir? A. I did.

Q. And what local union did you belong to? A. 562.

Q. And how long were you a member of Local 562? A. Twenty-seven years.

Q. Now, when did you retire, sir? A. September 1st, 19 and 66.

Q. All right. That is the last time you worked as a pipefitter, on September 1st, 1966? A. Right.

Q. Now, prior to the time that you retired, sir, were you familiar with the Voluntary Fund? [1,562] A. I was.

Q. And while you worked, did you contribute to the Voluntary Fund? A. I did.

Q. And were the contributions you made to this Fund, sir, were they voluntary? A. Absolutely.

Q. How did you contribute? Some of the time? All of the time? Most of the time? A. I hate to say, I missed some of the time; yes, sir.

Q. The times that you missed contributing, did anybody every talk to you about this? A. Absolutely not.

Q. Were you ever told that you had to pay this? A. No, sir.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do you remember when your assessments went up to three and three-quarters per cent of your gross wages? A. I do not.

Q. Well, do you remember when your payments into the Voluntary Fund went down? A. I remember when they went down; yes, sir.

[1,563] Q. Well, do you recall that the payments into the Voluntary Fund went down the same time that your assessments went up? A. No, I don't.

Q. You don't recall that? A. No, sir.

Q. You say you missed a few payments? A. Yes; quite a few of them.

Q. Did you catch up on them? A. No.

Q. You didn't catch up on them? A. No.

Q. Sir, you retired when? A. 1966; September 1st.

Q. 1966? A. Yes, sir.

Q. When is the last payment you made into this Voluntary Fund? A. The last week I worked.

Q. When is the last? A. I imagine I paid—now, I wouldn't say for sure now. I never kept track of it.

Q. When is the last time you paid an assessment into the Union? [1,564] A. The last week I worked.

Q. An assessment? A. Yes, sir.

Q. You paid that for the last time? A. Yes, sir.

Q. When you worked? A. Yes, sir.

Q. And you paid into the Fund the last time you worked? A. I wouldn't say I paid in the Fund or not. I think I did. Yes, sir.

Q. The last week? A. Yeah.

Q. Did you pay the next week, the first week you were off? A. No, I didn't work.

Q. So you paid into this Fund when you worked? A. Yes.

Q. Voluntarily when you worked? A. Yes, sir.

Q. And haven't paid a penny into it since? A. No, sir.

Q. Did you ever pay into it when you weren't working? A. No, sir.

Q. Why? A. Why?

[1,565] Q. Yes. A. The only reason why I wasn't—I didn't feel like I had to, or wanted to, or I had the money.

Q. When you weren't working? A. Yes, sir.

Q. But when you were working, you felt like you should? A. Yes, I felt like I should.

Q. Yes, sir. When you stopped working, when you retired you stopped paying your assessments? A. Right.

Q. And you stopped paying into the Fund? A. Right.

Q. Were you ever foreman on a job? A. No, sir.

Q. Have you always been a member of 562? A. Twenty-seven years I have been a member; yeah.

Q. Sir, did your interest in politics cease the day you quit working and went on retirement? A. No, sir.

Q. Did you understand this Fund was to be used for political purposes for the benefit of society, and the country as a whole? A. Well, I felt like that; yeah. To the men that was friendly towards labor.

[1,566] Q. You don't feel that way anymore? A. I sure do.

Q. Why haven't you paid? A. Because I don't have the money, Mister.

Q. Yes, sir. A. That's the reason.

Q. Have you made any contributions to any political party since you went on retirement? A. No, sir. You don't do that on $250.00 a month. You don't hardly make many—I wish I could though.

Mr. Riddle: I have nothing further to ask this witness.

The Court: Anything else?

Mr. Daly: No redirect examination.

(Witness excused.)

ALBERT LANG,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Albert Lang.

Q. Where do you live? [1,567] A. 7533 Buckingham Drive, Clayton.

Q. Mr. Lang, are you a retired member of Local 562? A. I am.

Q. And while you were active, sir, did you make contributions into the Voluntary Fund? A. I did.

Q. Were your contributions into the Fund voluntary, sir? A. Absolutely.

Q. Did you attend any meetings of the Voluntary Fund? A. Yes.

Mr. London: You may examine.

Cross-Examination.

By Mr. Riddle:

Q. Where did you go to attend these meetings of this Voluntary Fund? A. I believe it was at the Electricians hall.

Q. Where the meetings of the regular Union membership were held also? A. Meetings were called on a Sunday, as a rule.

Q. Of all the members of 562? A. I don't think all of them ever showed up at one time.

Q. But this is a hall where the regular meetings of the Union are held? A. Oh, yes.

[1,568] Q. Sir, you paid your dues and assessments all the time you were working, I assume? A. Yes.

Q. And you paid them voluntarily? A. Absolutely.

Q. And you paid into this Fund voluntarily? A. Right.

Mr. Riddle: I have nothing else to ask him.

The Court: Anything else?

Mr. London: No, sir.

The Court: Step down.

(Witness excused.)

GUSTAVE ENGEL,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Engel, would you state your full name, please, sir? A. Gustave Engel.

Q. Where do you live, Mr. Engel? A. 2510 East Main, Belleville.

Q. Belleville, Illinois? A. Um hmm.

[1,569] Q. Are you a member of Pipefitters Local 562? A. I am.

Q. How long have you been a member, sir? A. Twenty-five years.

Q. Are you presently working? A. Yeah.

Q. And for whom are you working now? A. G. C. Shaw.

Q. And what is G. C. Shaw? A. Heating contractor.

Q. And how long have you been working for him? A. Fifteen months.

Q. And are you working as a journeyman? A. Yes.

Q. Are you presently paying into the Pipefitters Voluntary Fund? A. No.

Q. How long has it been since you made your last payment? A. About June of '67.

Q. And, sir, prior to that time, did you pay regularly into the Fund? A. No, I didn't.

Q. How did you pay? [1,570] A. It was a hit and miss proposition.

Q. Have you ever worked on construction jobs? A. Yes.

Q. What are some of the construction jobs you worked on? A. Missouri Baptist Hospital. This one on South Grand. What is the name of that?

The Court: Hospital?

The Witness: Yeah.

The Court: Incarnate Word?

The Witness: No, no, no. It is down there by the Pevely Dairy. Firmin Desloge.

Q. (By Mr. Randall) Firmin Desloge? A. Yes.

Q. Sir, when you worked on construction jobs, did you pay regularly or intermittently at that time? A. I don't remember that far back.

Q. You don't recall. Now, when you were behind, or since you have quit paying, has anyone ever spoken to you about that fact? A. Nobody ever approached me.

Q. Nobody ever asked you or spoke to you? A. Nobody asked me to come in and square up, or nothing like that.

Q. Did you talk to me and tell me the other night what [1,571] you testified to here today? A. Yes.

Q. And where did I question you, sir? A. If I paid regularly, or if I paid anything at all, or about when it was, if I could recall.

Q. Where did I question you, sir? A. Out——

Q. Where were you? Where did I see you? A. At 562 hall.

Q. At the hall, sir. And how did you happen to be at the hall there the other night? A. I was called.

Q. But did something occur prior to that time to cause you to appear there and be questioned by me? A. Not that I know of.

Q. Did you attend the meeting of the Union that week? A. Oh, I missed that last week. I was to the meeting in April.

Mr. Randall: I see. OK. You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do you know why you were called in? A. I haven't the least idea.

Q. Who called you in? [1,572] A. The contractor called and said they wanted to see me.

Q. Do you remember the man's name that called you? A. The call didn't come direct to me. It was passed on to me.

Q. Who passed it on to you? A. The foreman.

Q. What is your foreman's name? A. Tom Lambridge.

Q. What did Mr. Lambridge tell you? A. He said to go into the hall after work; they wanted to have a little get-together. Have a talk.

Q. Did he tell you what it was for? A. He did not.

Q. Sir, you said that you had been working down at G. C. Shaw for about fifteen months? A. That's right.

Q. You say you haven't paid for the past fifteen months? A. I haven't paid since I worked for Shaw.

Q. Yes, sir. Is Shaw a construction company? A. Heating and air conditioning contractor.

Q. They don't do construction work? A. No.

Q. Are you a foreman? A. No.

[1,573] Q. Have you ever been a foreman? A. No.

Q. Who is the foreman on that job down there? A. Well, I worked for two of them in the last couple weeks. One is Bill Moody, and the other one was Tom Lambridge.

Q. Are there any other fitters on that job besides you? A. Otto Dietrich.

Q. Otto Dietrich? A. Yeah.

Q. Just you two? A. No. There's three of us; sometimes four.

Q. Well, there's you and Otto Dietrich, and then the foreman? A. Bill Moody, who is in charge, and Tommy is there sometimes. He is riding foreman.

Q. You mean since you have been there, the foreman hasn't been around to make a collection? A. No.

Q. Prior to that time when you were on construction, you paid in to the foreman each month, did you not?

A. That's been a long time ago. They come around and ask you if you want to give a contribution. If you didn't have it, they didn't bother you.

Q. Sir, what was the job you worked on just before you [1;574] went to Shaw? A. Lutheran Hospital.

Q. Who was the foreman there? A. Tom Cohen.

Q. You made payments there? A. No.

Q. None at all? A. No. There was only two of us on that job. We was working on Lamson Tube Company.

Q. On the larger jobs that you worked on in the past, are those the ones you were working on when you made payments? A. Let me think once. Anybody that wanted, when Monday morning comes, if anybody wanted to donate to the Voluntary, they could, but they didn't bother you.

Q. But what I am asking you, sir, on the larger jobs that you worked on—— A. I did sometimes.——

Q. Sometimes you didn't, you say? A. No.

Q. What did you tell the foreman when he asked you for his money? A. I told him I didn't have it; short.

Q. Did he ask you, even though you didn't pay? A. He says, "Forget about it. I will catch you some [1,575] other time."

Q. All right. But nobody has been around to ask you since you have been on this small job? A. No.

Q. Is that the reason you haven't paid, because they haven't been asking you? A. I have been kind of behind the financial 8-ball.

Q. Did you tell anybody down at the hall that you were behind a financial 8-ball? A. No.

Q. Did you tell your foreman you were? A. Yes, I spoke to him about it about a year ago.

Q. Did you tell him about that in connection with why you weren't paying into the Fund? A. Yeah.

Q. Sir? A. Yeah.

Q. You wanted him to know for certain why you weren't paying in? A. I'll tell you, everybody works for Shaw sends their own in. There ain't no collector.

Q. You thought it was advisable to tell your foreman that you were having some financial difficulties? A. He asked me if I paid any in lately. I said, "No. [1,576] I have been kind of financially up against it."

Q. You mean the foreman came up to you? A. No. We was just sitting eating at noontime, just conversation, he asked me, and I said, "No. I have been kind of financially up against it."

Q. What did he say about that? A. Nothing.

Q. But you felt that there was some reason, or a reason for you to make an explanation why you hadn't been paying, didn't you? A. No. Just conversation, that's all I'd say.

Mr. Riddle: I have nothing further to ask.

The Court: Any redirect.

Mr. London: No.

The Court: Step down.

Mr. Riddle: Just one additional question.

The Court: All right. Resume your seat.

(The witness resumed the witness stand.)

Q. (By Mr. Riddle) Do you know how they got your name as being one of the people who hadn't paid in? A. I haven't got the least idea.

Q. Anybody ever tell you that they got your name from out of the records as a non-payer part-time? A. No.

[1,577] Q. Somehow they found out? A. It is news to me.

Mr. Riddle: That's all.

Mr. Randall: I now have a few questions.

Redirect Examination.

By Mr. Randall:

Q. Sir, how many people were there at the hall the night that I questioned you? A. I'd say there must have been at least fifty.

Q. And do you know how many of those people paid regularly, and how many of them don't? A. No, I don't.

Q. In other words, you don't know whether anybody got your name at all from the records, except that you were a member of the Local; isn't that correct? A. That's right.

Q. And the only way that I knew you didn't pay was because you told me.

Mr. Riddle: I will object to that. It would call for a conclusion of this witness.

The Court: Be sustained.

Mr. Randall: That's all.

The Court: Step down.

(Witness excused.)

[1,578] **HERBERT HINRICHS,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Henrichs, would you state your full name, please, sir? A. Herbert Hinrichs.

Q. Hinrichs. Pardon me. Where do you live, sir? A. 5958 Sherry, St. Louis, Missouri.

Q. And are you a member of Pipefitters Local 562? A. Yes, sir.

Q. For how long have you been a member, sir? A. Close to twenty years.

Q. Now, what is your present employment? A. I'm a foreman at G. C. Shaw, Incorporated.

Q. For G. C. Shaw, Incorporated. Does a man named Gus Engel work for you? A. He works at G. C. Shaw.

Q. But he is under your supervision, or someone else's? A. Well, we are on different jobs, if that is what you mean. We have worked together a number of times. Right now he is on a different job.

Q. He is on a different job. All right. Now, sir, how [1,579] many men do you have under you at the present time? A. One. It has averaged from one to eight. At the present time, there is just one working with me.

Q. Just one. Now, have you ever collected for the Voluntary Fund from any of your men? A. No, sir.

Q. Have you paid into the Voluntary Fund? A. Yes, I have.

Q. And how have you made your contributions, sir? A. I always pay by check.

Q. And how often do you do that, sir? A. Well, it always varies. I might pay, let's say, I am paid up right now, and then I might wait possibly two months, three months, then I send in a check whenever, when you get around to it, or when you have a little surplus, you might say, and then again at times I have left it go as long as six, seven months, as well as I can remember.

Q. Has anyone ever spoken to you about being behind in your contributions? A. Never.

Q. Have your contributions been voluntary? A. Yes, been voluntary.

Q. Have you ever talked to any of the men under you about contributing to the Voluntary Fund? [1,580] A. No.

Mr. Randall: You may inquire. Pardon me. I have one more question.

Did I interrogate you the other night, sir? Did I question you the other night? A. You asked me a number of questions; yes.

Q. Did I ask you questions similar to what I asked you today? A. About the same thing.

Q. And you gave similar answers to me at that time? A. Approximately the same thing.

Mr. Randall: That is all. You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. You say you are paid up now and current? A. Right, now? Well, to tell you the truth, I'd have to look at my last check stub. I know I am not paid up, because I haven't paid in the last couple months, no, so it would make me not paid up, if you want to call it paid up.

Q. Yes. Do you know about how much you owe? A. I'd have to take a guess, because I don't know when the— I have to look at the checkbook to find out when I paid last. I would say that just a rough guess, if that is what you'd like to have, would be three months.

[1,581] Q. About three months behind? A. Something like that.

Q. About how much money will that be? A. Well, I pay two and a half a week, which would be $10.00 a month.

Q. So you owe about $30.00 now? A. It's a guess, yes.

Q. And the rate of your payments now is what? Fifty cents a day, you say? A. Yes, sir, that is what I pay.

Q. Do you remember when it was a dollar a day? A. Yes, I do.

Q. Do you remember when it was decreased to fifty cents a day? A. To tell you the truth, I can't tell you exactly when; no.

Q. Do you remember when your assessment, your regular assessment, was increased from two point something up to three point something? A. No. I'd have to look at old check stubs to tell you exactly that answer. It is just like Social Security. It goes up. You don't look at that all the time either.

Q. Do you pay your assessments by check? A. No. That comes right out of my—my employer [1,582] withholds that. That is the reason why I say it is like Social Security, you don't——

Q. You didn't pay too much attention to how much or when that was actually increased? The assessments were taken out of your pay? A. At the time it went up, I say it was increased, and from then on, you know, it is increased. I didn't make a mental note of what date it was increased.

Q. Sir, do you recall that your regular assessments went up at the same time that your Voluntary payments went down? A. That sort of does ring a little bell now that you have mentioned it. I couldn't say for sure if that's the way it happened; no.

Q. The net, the end result of that was it wasn't costing you any more to work, was it? A. I have never stopped to figure that out, really.

Q. Sir, you pay your assessments and your dues voluntarily, I guess? A. My assessments and dues come right out of my check.

Q. But you voluntarily consent to it? You sign a form that says they can withhold those dues and assessments, your employer can? A. My employer withholds them. I don't remember if I filed a form for that or not.

[1,583] Q. You don't remember filing a form or consent, written consent? A. I don't remember one; no. There very possibly might have been one, but you don't remember all those incidentals. You know you are going to pay it, so you might have filed a form. It is one of those things you are going to have to pay. If it is assessments or dues that goes to Washington, you know for a fact that you are going to have to pay it.

Mr. Riddle: I have nothing further to ask this witness.

Mr. Randall: Nothing further, Your Honor.

The Court: Step down. Call your next witness.

(Witness excused.)

FRANCIS X. MOHAN, SR.,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? A. Francis X. Mohan, Sr.

Q. And where do you live, Mr. Mohan? A. 16 Manor Drive.

Q. And where is that? A. Florissant, Missouri.

[1,584] Q. Are you buying that home out there? A. Buying it; yes, sir.

Q. Are you presently a member of Local 562? A. I am.

Q. And how long have you been a member of Local 562? A. Since 1955.

Q. And what did you do prior to that time, Mr. Mohan? A. I was a police officer in the City of St. Louis.

Q. How long were you a St. Louis police officer? A. Six and a half years.

Q. Now, you are, at the present time, a member of Local 562? A. I am.

Q. And are you familiar with the Voluntary Fund, Mr. Mohan? A. Yes, sir.

Q. And did you sign a Voluntary Contribution card? A. Yes, sir.

Q. And, sir, do you contribute to the Voluntary Fund? A. I do.

Q. And do you make those contributions voluntarily? A. Yes, sir.

Q. Has anyone ever told you that you had to contribute to this Fund? [1,585] A. No, sir.

Q. Has any of the defendants, Mr. Callanan, or Mr. Lawler, or Mr. Seaton, ever told you that you had to make these contributions in order to work? A. No, sir.

Mr. Daly: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do you know what your "contribution" now is per day? A. Sorry, sir.

Q. Do you know what your "contribution" is per day now? A. It is 50 cents a day. Is that what you mean, sir?

Q. Yes. Who told you it was 50 cents a day? A. I don't know. That is what we have all been giving. In fact, we voted on it at a meeting.

Q. Union meeting? A. No, sir. Voluntary Fund meeting.

Q. Do you remember when that vote was? A. Well, there was—I think it was a meeting in '63, and to be

honest, we changed it a couple times, and I am not sure what date it was on; no, sir.

Q. Well, the most recent change, do you recall that? A. Yes, sir. That was at the Electricians hall.

[1,586] Q. That was a change up or down? A. Change down.

Q. Down to 50 cents? A. Yes, sir.

Q. Before that time it had been a dollar? A. Yes, sir.

Q. It had been a dollar for some year and a half or so, or possibly longer? A. I wouldn't remember the exact length of time, but it was a dollar for a while. I know that.

Q. Do you remember that your assessments went up at the same time that your payments into this Fund went down? A. I believe so, sir.

Q. What was the net amount that you were paying in afterwards as compared with before? A. Assessments, or Voluntary Fund, or which?

Q. All told? A. Now we pay three and three-quarters per cent assessments, we pay three dollars and a half a month dues, and we give fifty cents a day to the Voluntary Fund.

Q. And that totals about how much? Do you know? A. About $10.00 a week.

Q. About $10.00 a week is what the total amount to you is? A. Ten or eleven; something of that nature.

[1,587] Q. Sir, wasn't it about $10.00 a week before the change in the rate structure? A. I believe so. It was a dollar a day, would be $5.00 a week; yes.

Q. Plus the assessment? A. Yes, sir.

Q. Totals about $10.00 before the change in rate structure in January of 1966, and about $10.00 thereafter? A. I believe so.

Q. So the assessment was just pumped up a little bit, and the Voluntary Fund was just pumped down a little bit.

Mr. Daly: Your Honor, I object to that term, and ask it be stricken.

Mr. Riddle: It is cross-examination.

The Court: Well, it is cross-examination.

Mr. Riddle: The form of the question may be a little bit off, Your Honor. I will withdraw it.

Mr. Daly: I will allude to, I will agree with Mr. Riddle's objection to the form, Your Honor.

The Court: I beg your pardon?

Mr. Daly: I will agree with Mr. Riddle about the form and——

The Court: I will move on it to the extent that you give me a legal reason, I will be happy to listen to it. The comment, [1,588] I will not.

Mr. Daly: Let the record show my objection to the form of the question.

The Court: It is withdrawn. It is moot now.

Q. (By Mr. Riddle) Sir, were you pleased when the contributions were decreased from a dollar down to fifty cents? A. Well, I have got to be frank. I would give a dollar a day today.

Q. Why don't you give a dollar a day today? A. Because I don't want to get out of line with the fellows.

Q. You don't want to get out of line? A. I'm sorry. If I give a dollar a day the other fellows on the job figure they will have to give a dollar.

Q. Sir, have you ever given more than 50 cents a day? A. Yes, sir.

Q. Since it was reduced to 50 cents, since January 1 of 1966, have you ever paid a penny in more than 50 cents? A. I don't believe so.

Q. Have you ever paid any more as a regular assessment than what everybody else was paying? A. On my assessment?

Q. Yes. A. No. I pay the assessments three and three-quarters [1,589] per cent?

Q. Just like everybody else pays? A. Yes, sir.

Q. Sir, do you—well, I'll strike that. I have nothing further to ask this witness.

The Court: Any redirect?

Mr. Daly; No redirect.

The Court: Step down. Call your next witness.

(Witness excused.)

WILLIAM ULRICH,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. William Ulrich.

Q. Where do you live, sir? A. 3708 Winnebago.

Q. Mr. Ulrich, are you a retired member of Local 562? A. I am.

Q. Now, when you were—Before your retirement, sir, did you contribute into the Voluntary Fund? A. I did.

Q. And were those contributions voluntary, sir? [1,590] A. They were.

Q. And did you attend some of the Voluntary Fund meetings, sir? A. I did.

Q. Did anybody ever tell you that you had to contribute to the Fund? A. Never.

Q. Did you always contribute to the Fund, or were there times that you didn't contribute? A. No. I contributed faithfully.

Q. You contributed only when you were working, or—— A. No—well, yeah. But, I mean, I worked for a small contractor, and if I'd lose a half day, or a day, I still paid for that.

Q. In other words, even though you might not work a full eight-hour day, you'd still make a contribution that you had agreed to make; is that correct, sir? A. That's right.

Mr. London: You may inquire.

Mr. Riddle: I have just one or two questions of him.

Cross-Examination.

By Mr. Riddle:

Q. You paid in, you say, faithfully? A. I did.

[1,591] Q. You faithfully paid all your dues and assessments, didn't you? A. The dues too.

Q. You voluntarily paid them? A. I had to pay the dues.

Q. Did you enjoy paying into this Fund all the time? A. I most certainly did.

Q. Weren't you happy when the dues were decreased? A. Not necessarily. I wouldn't say so. I think that it was a good thing to pay the full amount.

Q. Do you remember when it was a dollar a day? A. I remember it very well.

Q. Do you remember when it was reduced to 50 cents a day? A. I do.

Q. Did you continue to pay a dollar, or just 50 cents? A. No, I paid the 50 cents.

Q. Why didn't you pay more if you thought it was a good thing? A. Well, that's what everybody else was doing.

Q. This is what you were told to pay, because you were told what the rate was, isn't it? A. Well, we were told it was 50 cents then. Yes.

Q. And you paid faithfully right along? (No reply.)

[1,592] Mr. Riddle: I have nothing further.

Mr. Daly: No redirect examination.

The Court: All right. Call the next one.

(Witness excused.)

PATRICK JOSEPH HICKEY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. State your name, please? Patrick Joseph Hickey.

Q. Where do you live, Mr. Hickey? A. 4508 St. Leo, St. Ann.

Q. With whom do you live? A. I am sorry.

Q. With whom do you live there? A. My wife and six children.

Q. I see. Now, are you at the present time, a member of Local 562? A. I am.

Q. Move back just a bit, you won't hit that.

How long have you been a member of Local 562, Mr. Hickey? A. Approximately twenty-three years.

[1,593] Q. And you also hold some elective office in the State of Missouri? A. Yes, sir, I do.

Q. What office is that? A. I'm the State Representative from the Thirty-First Legislative District.

Q. That comprises the area of approximately where you live? A. Close to the Airport in St. Louis County.

Q. Are you familiar with the Voluntary Fund? A. Yes, sir.

Q. And have you signed a Voluntary Contribution card? A. I have.

Q. And do you contribute to this Fund, Mr. Hickey? A. I do.

Q. How do you make your contributions? A. I have made some contributions in cash, and some contributions in check.

Q. Has anyone ever told you that you had to contribute to this Fund? A. Absolutely not.

Q. Has anyone ever told you if you didn't contribute to this Fund, you wouldn't work? A. Absolutely not.

[1,594] Q. He is your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, do you contribute into the Fund when you aren't working? A. Into the Voluntary Fund?

Q. Yes. A. No, sir.

Q. Only when you work? A. Only when I work.

Q. And you pay into it voluntarily? A. Yes, sir.

Q. You pay your assessments and dues voluntarily? A. No, sir. That is mandatory.

Q. That is mandatory. You don't voluntarily pay them? A. I am sorry. I didn't understand you.

Q. Your dues and assessments, you pay them voluntarily too, don't you? A. My dues and assessments?

Q. Yes. Don't you voluntarily pay them? A. No, sir. They are mandatory. I have to pay dues and assessments.

Q. I see. You pay them just when you work? A. No, sir. My dues are based on a monthly basis.

[1,595] Q. Which are assessments? A. Sir?

Q. Your assessments are—— A. Are based on my wages.

Q. So you pay your assessments when you work, and you pay into the Political Fund when you work? A. I'm sorry.

Q. I say you pay your assessments when you work, and you pay into the Political Fund when you work? A. I pay my assessments, which are mandatory, when I work.

Q. Right. Then—— A. My Voluntary Fund I pay when I work.

Q. Right. And your payments in the Voluntary Fund are 50 cents a day now? A. Into the Voluntary Fund, the payment is 50 cents for eight hours.

Q. Do you know what your assessment rate is now? A. Its—the assessment rate is three and three-quarters per cent of my—it is deducted by the contractor.

Q. Do you know what that amounts to per day on an 8-hour day? A. I'm not too good at arithmetic, Mr. Riddle.

Q. About a dollar and a half [1,596] A. As I say, I'm not too good with arithmetic.

Mr. Riddle: I have nothing further.

The Court: Anything else? Step down.

(Witness excused.)

FRED A. GERDING,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Gerding, would you state your name, please, sir? A. Fred A. Gerding.

Q. Where do you live? A. 6771 Vernon.

Q. What city? A. University City.

Q. Are you a member of Pipefitters Local 562? A. I am.

Q. How long have you been a member? A. Two years.

Q. And prior to that time, prior to becoming a member of 562, did you do any work under the jurisdiction of Pipefitters Local 562? A. I did.

Q. For how long? [1,597] A. Two years.

Q. Now, during that two years you were working under the jurisdiction of 562 before becoming a member, did you contribute to the Voluntary Fund? A. Part-time.

Q. How much did you contribute during this two-year period? A. Oh, I'd say less than $80.00.

Q. $80.00 in the two years? A. Yes, sir.

Q. Then you became a member, and since you have been a member, have you contributed to the Voluntary Fund? A. Yes, I have.

Q. Have you contributed regularly since you became a member? A. No, sir.

Q. And how do you make your contributions? A. By check, or by cash.

Q. And on what jobs have you worked, sir, since starting back, before you became a member? A. I worked for Shure-Richardson. I worked for Hussmann, for Bridges

& Gerald, for Climate Service Company, and for Climate Engineering.

Q. And since you have become a member, whom have you [1,598] worked for, or did you cover all of them? A. That is approximately all of them.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, what local were you a member of before you became a member? A. 581.

Q. 581? A. Yes, sir.

Q. Where is that? A. Hannibal.

Q. And when did you become a full member of 562? A. April of '66.

Q. April of '66? A. Yes, sir.

Q. Before you became a member, do you remember what you were paying into this Fund each day? A. Into the Voluntary Fund?

Q. Yes. A. Two dollars a day, when I paid.

Q. And just as soon as you became a member, what did you pay? A. Fifty cents a day.

[1,599] Q. Is there any reason why you, all of a sudden, decided to pay less, or pay 50 cents rather than $2.00? A. It was voted at a meeting that the members pay 50 cents, and the out-of-town pay $2.00.

Q. Was it voted at a meeting just like the assessments are voted? A. Assessments aren't voted at a meeting.

Q. They aren't? A. No. As far as I know, they are not.

Q. Well, do you know how your assessments got to be where they are now? A. No. To be honest with you, I don't.

Q. Did you, as a member, have a voice in voting what the assessment is? A. I do.

Q. Sir? A. I do.

Q. Well, my question then again to you is this: Were the assessments voted by the members, just like the decrease was voted? A. I really couldn't answer that, sir. I don't remember that.

Q. Well, did it cost you more to work per day before you became a member of Local 562? [1,600] A. I don't quite understand that question.

Q. Well, you were paying $2.00 a day when you were a non-member. Now then, you are paying 50 cents a day. My question is did it cost you less to work per day after you became a regular member? A. Well, my assessments are taken out of my check.

Q. So you don't know what they are? A. It's three and a half per cent out of my check. That would roughly work out to the same amount.

Q. About a dollar and a half a day for assessments? A. Approximately.

Q. So it cost you just about the same then? A. That's true.

Mr. Riddle: That's all.

(Witness excused.)

JOHN C. LAIRD,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. My name is John C. Laird.

Q. Where do you live? A. Cape Girardeau, Missouri.

[1,601] Q. Are you a member of Local Union 562? A. Yes, I am.

Q. Are you familiar with the Voluntary Fund? A. Yes.

Q. Do you contribute to the Voluntary Fund? A. Very infrequently.

Q. Are you working regularly? A. Yes, sir.

Q. When you have not contributed to the Fund, have you lost any work? A. No, sir, I haven't lost any work in thirteen years.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. You live at Cape? A. Yes, sir.

Q. But belong to 562? A. Yes, sir.

Q. Did you ever belong to 318 down there? A. No, sir.

Q. How long have you lived in Cape? A. I have been living here four years this October.

Q. In Cape? A. Yes, sir.

[1,602] Q. Sir, you have paid into the Fund, I guess? A. Some; not too much. I paid just infrequently. When I have a little family expenses and trouble, I refrain from paying, because I think my family needs it more than the Voluntary Fund needed it at that time.

Q. Do you remember who your foreman was on any occasion when you didn't pay? A. My foreman was Bill Murphy.

Q. What job was Mr. Murphy on? A. He was riding boss for Powers Regulator Company.

Q. What was that construction project known as? A. I was on all projects. I was working out of the shop of Powers Regulator Company in St. Louis, Missouri. We do quite a few different jobs. I was all over; no special one job, you know.

Q. You just weren't on a construction job working. You worked out of the shop here in town? A. Yes, sir.

Q. Well, at any time, did you ever work on a construction job like Tom Sauk or—— A. The big jobs, no, sir. I worked mostly small contractors.

Q. Small contractors? A. Most of the time; yes, sir.

[1,603] Q. Did anybody ever come around and collect from you while you were on a job? A. Yes, sir.

Q. What jobs were they? A. That was at Pilot Knob, Missouri.

Q. How long were you there? A. Approximately seven months.

Q. Who was your foreman there? A. Jim Polito.

Q. Polito? A. Yes, sir.

Q. Now, while you were working on that job for Mr. Polito, you paid every week, didn't you? A. Yes, sir, I sure did, because I am in better shape since then.

Q. Sir? A. I have been paying regular for over a year now, because my financial status is a lot better now. I had a lot of illness in my family, and that is the only reason I didn't pay it, but I have never been punished for it either.

Q. On this job when Mr. Polito was running it, there were several hundred people working there? A. Yes, sir, there was about 150 men.

Q. And you paid regularly every Monday morning?

[1,604] A. Sometimes I didn't show up on Monday morning, I'd pay it when I came in, whatever day it was.

Q. What other large construction jobs have you been on? A. That is the only large one I have been on. There was another one I paid to, which was with General Installation, on the turbine down in Cape Girardeau. I paid to that one there.

Q. How many people worked on that job? A. Twenty-six men.

Q. And you paid regularly when you were on that one? A. Yes, sir, I did.

Q. And other large ones? A. No. No real large ones; no, sir.

Q. Well, then is it your testimony that you paid on the larger ones, but you didn't pay on the small jobs? A. My testimony is I paid when I felt like paying.

Q. My question, sir, is on these two you told us about, one is the large job down at Pilot Knob? A. Yes, sir.

Q. You testified you paid there all the time? A. Yes, sir.

Q. Another large job was for General Installation? A. Yes, sir.

Q. And you paid there all the time? A. Yes, sir.

[1,605] Q. And you paid there all the time? A. Yes, sir.

Q. All right. Were there any other large jobs? A. No, sir. But I am paying on the job I am on now, and it is not large.

Q. I am asking you are there any other large jobs you worked on? A. Yes, sir. I worked on one large job when I was an apprentice, and that was at the Jewish Hospital in 1955.

Q. When you were an apprentice? A. Yes, sir.

Q. Did you pay when you were an apprentice? A. No, sir.

Q. Any other large jobs besides those three that you mentioned? A. It depends what you call large. Do you mean ten men, five men, fifteen, twenty? I have been on jobs there have been ten men, some four, some two.

Q. Let's use the figure twenty-five. A. Twenty-five men? No, sir. I think that is the only job there has been twenty-five men on.

Q. That one you just mentioned, the one at Pilot Knob and the one at Jewish Hospital? A. Yes, sir.

[1,606] Q. And you paid on two of those, or two of them, and one you didn't pay because you were an apprentice? A. Yes, sir.

Q. These larger jobs, the foreman or steward came around and made the collections? Did they not? A. We made them through the foreman, normally.

Q. Well, the foreman came around and made the collections each week? A. Not always came around. I went to him once in a while too.

Q. When you weren't going to him once in a while, he came to you? A. Naturally, sir. He knew where we were.

Q. Sir, on these smaller jobs, how many people were working on them? A. I worked as many as ten, and as little as two of us.

Mr. Riddle: I have nothing further to ask him.

The Court: Any redirect?

Mr. Daly: No, Your Honor.

The Court: Step down.

(Witness excused.)

GERALD B. ROBERTS,

being first duly sworn, testified in behalf of the defendants as follows:

[1,607] **Direct Examination.**

By Mr. Daly:

Q. State your name, please. A. Gerald B. Roberts.

Q. Where do you reside, Mr. Roberts? A. 1412 Lindenthal, Highland, Illinois.

Q. And are you a member of Local 562? A. Yes, I am.

Q. How long have you been a member of that Local, Mr. Roberts? A. Since the 16th of February, 1949.

Q. All right. Now, are you familiar with the Voluntary Fund? A. I am.

Q. Do you, at this time, contribute to the Fund? A. No, I do not.

Q. And have you ever contributed to the Fund? A. Yes, I have; on two occasions.

Q. I see. Has anyone ever told you you had to contribute to the Fund? A. No, sir, they have not.

Q. You never lost any work as a result of your not contributing to the Fund? A. No, I have not.

[1,608] Q. Why do you not contribute to the Fund, Mr. Roberts? A. Because my views differ from the present administration in many ways in foreign policy, in the war in Vietnam, and on the home front.

Q. What political party do you belong to? A. I belong to the Republican Political Party.

Q. Is this the reason you don't contribute to the Fund? A. That is a contributing factor; yes, sir.

Q. And have you always worked steady? A. Constantly.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you live in Highland? A. Yes, sir.

Q. Who do you work for now? A. I work for Honeywell, Incorporated.

Q. And where are they located? A. At 2416 Hampton Avenue, St. Louis.

Q. Sir, how long have you worked for Honeywell? A. Approximately six years.

Q. Who did you work for before you worked at Honeywell? A. Well, I worked for West County Piping, Eichler Corporation, Shure-Richardson, to name a few.

[1,609] Q. Now, this Honeywell Company we are speaking of this isn't construction work that you do for them? A. No, it isn't.

Q. Now, how many—Are you a foreman? A. No, sir, I am not.

Q. How many other pipefitters worked down there with you? A. I'd say approximately between twenty and twenty-five.

Q. These are sort of permanent employees of Honeywell? A. More or less.

Q. You don't get assigned around from job to job now from the Union hall? A. No.

Q. Are the other pipefitters down there members of Local 562? A. I think most of them are. I think there may be a couple of members working for them out of the Cape Girardeau local.

Q. You haven't been assigned to a job out of the Union hall here for the past six years? A. Yes, I have.

Q. I thought you were working at Honeywell for the past six years? A. I have been. I said there was two occasions that I didn't.

[1,610] Q. You mean two occasions in the last six years that you haven't worked for Honeywell? A. Yes, sir.

Q. When were those occasions? A. One of them was a year or a year and a half ago that I worked at the powerhouse up at Portage des Sioux for a week.

Q. One week? A. For about a week, or approximately a week.

Q. All right. A. Another time was this summer when I worked at the old Scullin Steel Plant, or Gateway Ammunition for approximately a week.

Q. Any other time? A. No, sir.

Q. Were you on vacation during those weeks, the reason you were? A. No, sir. We were on strike.

Q. Oh, you were on strike down at Honeywell? A. Yes, sir.

Q. Sir, on the week that you were working down at Gateway Ammunition, did you make a contribution that week? A. Yes, sir, I did.

Q. Yes, sir. What about the week that you worked at the power plant at Portage des Sioux? Did you make a contribution [1,611] that week? A. I think that I did. I'm not sure of that.

Q. On both occasions you were assigned out of the Union hall for those jobs? A. I was.

Q. Yes, sir. Now, sir, why did you make a contribution on those two jobs and for those two weeks? A. Mainly because the assessments and dues of our local are voted on and also are stable and our donations, or our assessments. In other words, they can't go up and down unless it is voted on by the membership. The officers of this Local went to a great deal of trouble and time to see that we were employed during the time of the strike, or the time of these two particular strikes. I felt, in some small way I could show my appreciation for this.

Q. Yes, sir. Did you show your appreciation for this on any other occasion, other than those two weeks? A. Not that I can recall.

Q. Yes, sir. Sir, are you telling this Court and jury that you only had consideration for that effort and for that Fund on the two occasions only that you worked and were assigned there by the Union hall? A. Yes, sir. That's true.

Q. Sir, didn't you feel that you had an obligation to [1,612] pay this into the Voluntary Fund for those two weeks? Isn't that the reason why you paid it? A. No, sir, I did not.

Q. Well, why did you decide to pay it for those two weeks, and those two weeks only? A. I just told you a moment ago.

Q. Yes, sir.

The Court: Any redirect?

Mr. Daly: No, Your Honor.

The Court: All right. Step down.

(Witness excused.)

RICHARD K. HARRELL,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Harrell, would you state your full name, please? A. Richard Kindall Harrell.

Q. Where do you live, sir? A. 1336 Valiant Drive, Fenton.

Q. Are you a member of Pipefitters Local 562? A. Yes, sir.

Q. How long have you been a member? A. 1945.

[1,613] Q. Since 1945? A. Yes, sir.

Q. Now, have you contributed to the Voluntary Fund? A. I have, at times; yes, sir.

Q. Have you contributed regularly or intermittently, or in—— A. Intermittently.

Q. Have you missed any work? A. Only when I was sick, or when I wanted to.

Q. Anyone ever speak to you about the fact that you weren't contributing regularly? A. Never.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Mr. Harrell, who are you working for now? A. A&P Grocery Company.

Q. How long have you been working for them? A. Going now onto three years; I have been with them twice.

Q. Before working for A&P, who were you working for? A. R. G. Berger & Company.

Q. What kind of business are they in? A. Construction business. Pipefitting.

[1,614] Q. What jobs did you work on for them? A. Well, several different jobs. Offhand it was a church job and supermarket job, National Food Center, and I don't remember just how many different jobs; quite a few jobs. He is a small contractor.

Q. He is a small contractor? A. Yes, sir.

Q. How many were working for him? A. At that time, I think it was about five.

Q. Five people? A. Yes, sir.

Q. How many pipefitters were working with you at the A&P Grocery? A. There's five.

Q. Five? Sir, have you been assigned out of the Union hall? During the whole three years that you were at A&P, had you been assigned to any other jobs other than the one at A&P? A. I was laid off at A&P for a short period of three months, due to service work being slack.

Q. Did the Union assign you out to another job? A. Yes, sir.

Q. What job did you go to? A. General Installation.

[1,615] Q. Where? A. Hussmann Manufacturing Plant.

Q. How long were you there? A. A little over three months, if I remember correct.

Q. Who collected your payments while you were out there? A. When I paid them, I forgot the fellow's name now. I usually went up and gave it to him, the Voluntary.

Q. Did you miss any payments when you were out there? A. I did; yes, sir.

Q. Sir? A. Yes, sir.

Q. Are you sure about that? A. Yes, sir.

Q. How many did you miss? A. I think I missed two while I was out there.

Q. Did you make them up? A. Sir?

Q. Did you make them up? A. No, sir.

Q. Since you have been working at A&P, how many have you missed? A. Quite a few. I had a lot of sickness and trouble, and I only paid when I didn't have an obligation.

Q. How do you pay your dues or into this Fund when you [1,616] are out at A&P? A. I mail it in.

Q. Mail it in? A. Yes, sir.

Q. You say you did have some sickness? A. Yes, sir.

Q. Did you tell any of the people at the Union that you had some sickness and some hardships? A. No.

Q. You didn't tell any of them that? A. I didn't.

Q. You didn't tell your foreman that? A. No. My foreman—I just mailed mine in. My foreman never asked me for it.

Mr. Riddle: I have nothing further of this witness.

The Court: Any redirect.

Mr. Randall: No.

The Court: Members of the Jury, we will recess now for lunch until 2:00 o'clock. Bear in mind the admonition I have given you heretofore.

(Thereupon at 12:55 p. m., court was in recess for lunch until 2:00 p. m.)

[1,617] Monday, September 16, 1968.
Afternoon Session.

JOSEPH W. UNGERER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Ungerer, would you state your full name, please, sir? A. Joseph W. Ungerer.

Q. Where do you live? A. 1420 Bob-O-Link, Florissant, Missouri.

Q. Are you a member of Pipefitters Local 562? A. Yes, sir.

Q. Have you contributed to the Pipefitters Voluntary Fund? A. At one time, I did.

Q. Are you contributing at the present time? A. No, sir.

Q. How long has it been since you made a contribution? A. Approximately two years, or better.

Q. Why did you quit paying, sir? A. Well, I have children going into college, two boys going into college, and I just needed my money, couldn't afford to.

[1,618] Q. Has anybody said anything to you about your not contributing? A. No, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. What was the date that you stopped paying? A. I can't give you that offhand.

Q. What kind of work do you do now? A. Pipefitter.

Q. For whom? A. Guaranteed Heating & Engineering Company.

Q. How long have you employed by them? A. Thirteen years.

Q. For the same company? A. Yes.

Q. Have you worked for them regularly and consistently for thirteen years? A. Yes, sir.

Q. You haven't been assigned out of the hall for a job then in thirteen years? A. No, sir.

Q. Sir, when you made your payments, how did you make them? [1,619] A. By check.

Q. Sir, when you ceased making your payments, who did you talk to about your financial situation? A. No one.

Q. No one? A. No, sir.

Q. Did you ever attend any union meeting after that? A. Oh, yes.

Q. You did? A. (Indicating yes).

Q. About how long was it when you stopped? A. I paid in approximately a year and a half.

Q. You paid in a year and a half? A. Yes, sir.

Q. You haven't worked on a construction job in thirteen years that you—— A. Oh, regularly.

Q. Well, Guaranteed Heating & Engineering Company? A. Yes, sir.

Q. But they had been your sole employers during the whole period? A. As a 562 member.

Mr. Riddle: I have nothing further.

The Court: Anything else? Step down.

(Witness excused.)

[1,620] **ROBERT A. YOUNG,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Robert A. Young.

Q. Where do you live, Mr. Young? A. 3500 Adie Road, St. Ann.

Q. Mr. Young, are you a member of Pipefitters Local 562? A. I am, sir.

Q. Are you, sir, presently holding any elective office in the State of Missouri? A. I hold two.

Q. How many offices do you hold, sir? A. I am Democratic Committeeman of Airport Township. I am the State Senator of the Twenty-Fourth District, and I hold another post. I am chairman of the Second Democratic Congressional District.

Q. Mr. Young, are you familiar with the Voluntary Fund? A. I believe that I am, sir. I'd say yes.

Q. Have you contributed to the Voluntary Fund? A. Yes, sir, I have.

Q. Have your contributions to the Fund been voluntary? A. Yes, sir.

[1,621] Q. Has anyone ever told you that you had to contribute to the Fund in order to work on a 562 job? A. No, sir.

Q. Have you ever attended any meetings of the Voluntary Fund? A. As many as I could possibly make, sir.

Mr. London: Thank you. You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, what rate of payment do you make into the Fund? A. At the present time, sir?

Q. Yes. A. Fifty cents a day.

Q. Do you make that when you work? A. I make it all the time, sir.

Q. Even when you are not on the payroll, you make it? A. Yes, sir.

Q. How many payrolls have you been on construction jobs under the jurisdiction of Local 562 in the last year? A. How many jobs, sir?

Q. Yes. A. You mean like four or five different jobs?

Q. Yes. A. Yes, sir, I have.

[1,622] Q. Like working as a pipefitter? A. Yes, sir. Would you like me to name a few that I have been on?

Q. Yes, if you would, please. A. The St. Louis State Hospital on Arsenal Street; the Lansdowne Medical Center, at Lansdowne and Chippewa, where I am presently working now, sir. I believe at the St. Louis City Hall in the last year and a half, on a part-time basis, when they needed additional help down there. That is my recollection right now.

Q. Did you work as a journeyman or as a foreman? A. I have been a journeyman and a foreman, sir.

Q. On these last three jobs, were you a journeyman? A. At times I have been both. Predominantly, I have been a journeyman. The foreman I was working for now was sick for about three weeks about a month or so ago, and

I was foreman on the job. Intermittently I have been foreman or journeyman, either way.

Q. Sir, during the period of time that you were away on official business, I take it that you are not on a construction payroll at that time? A. No, I'm not.

Q. Now, do you make a contribution into the Fund? A. I make, if we work four days, if there is a holiday, [1,623] I put in $2.00. If it is five days, I put in two-fifty. This is my choice, sir.

Q. Yes, sir. But for a period of time, we will say as much as two weeks, when you do not work at all, do you pay? A. Pretty much. I'm not going to say that I make the contribution diligently every week, but I do. I do say that most of the time I do make the contribution to the Political Fund.

Q. Even though you aren't working? A. Yes, sir. But, sir, this is my choice.

Q. You pay it in—Suppose you work no hours. What do you pay in for a week? A. Well, it would be $2.50 like I said, unless I—like I said, if it is a four-day week, there is a holiday or something, $2.00.

Q. Just so that the record is clear and the jury understands, the Court understands it, and certainly for my own understanding, do I understand your testimony to be that periods of time when you aren't working at all, when you are away on official duties—— A. That's right.

Q. ——as a legislator, do you pay into this Fund? A. I do, sir.

Q. How do you make your payments? [1,624] A. In cash, sir.

Q. Who do you make them to? A. Well, I usually collect the money myself. If I happen to be on a job and the men will give me the money, then I take it on to the Union hall and give it to, like there was a gentleman here a

short time ago, Mr. Beck, I would give the envelope and the slip of paper to Mr. Beck, or to anybody, you know, that I felt was involved in the Voluntary Fund, sir.

Q. Well, now, let's assume that it is a week where you aren't collecting yourself, and you pay in cash. How do you make that payment? A. Sir, I accumulate maybe over a month or so, and then I take it all down at one time.

Q. You take your money down? A. Plus any other.

Q. Plus the money that you collected? A. Of any other member that would contribute on the job, you know.

Q. Are you a steward? A. I would say yes, I would say I am a steward. I don't know how official that is, but any problems between the trades, they usually look to me to talk with the other crafts if we ever have any disputes, to try to work it out.

Q. Sir, at one time did you contribute $5.00 a week, [1,625] or a dollar a day? A. I am going to say yes, I believe we did, sir. I'm quite sure that it was a dollar a day at one time. When it was, I am not going to be able to tell you exactly what year it was, or anything like that, but I would say it is possible that I contributed a dollar a day.

Q. Well, do you recall—I am not asking for the possibility. If you recall, why so state. If you don't recall—A. Well, can I say I think I did, sir?

Q. All right. Do you remember about when your contributions went from a dollar to fifty cents? A. I believe in the last two years; last two and a half years, to the best of my recollection.

Q. Do you remember when the assessment went up from two point something to three point something? A. Three point three three four?

Q. Yes. A. I believe I do, sir. I'd say that was probably in the last two or two and a half years, to the best of my recollection.

Q. Did it happen about the same time, from your recollection? A. I believe so, sir.

[1,626] Q. At the same meeting? A. I can't give you an honest answer. I would say it is a possibility. I just can't recollect exactly what meeting this change might have been made.

Q. Sir, did you contribute to the Callanan Gift Fund? A. Yes, sir.

Mr. Daly: We object to that, Your Honor, and ask it be stricken, for the reasons already stated.

The Court: All right. The record will show that you objected. It will be overruled.

Q. (By Mr. Riddle) At the same rate? A. Which rate, sir?

Q. Well, maybe I should ask you at what rate did you contribute? A. I believe it was a dollar, if that was the Fund at that time.

Q. Whatever the amount was that everybody else was paying, that is what you paid? A. Yes, sir.

Q. Sir, did anybody ever consult with you about what use would be made of these funds that were collected? A. Consult with me individually?

Q. Yes. I am not talking about the Callanan Fund. A. Nobody consulted with me individually, sir, about [1,627] what usage this Fund would be put to. I have been at meetings, but nobody asked.

Q. Union meetings? A. Political meetings, I believe you are talking about, sir.

Q. I am asking you about the political meetings or Union meetings? A. Well, I'm not—you will have to restate right from the start, if you would, your last few questions, if you would, sir.

Q. Well. let's talk about a meeting at which some business of the Political Fund was discussed. A. Was I there?

Q. Yes. Do you remember such a meeting? A. I remember many of them, sir, I attended.

Q. What is the most recent one? A. I'm sorry, I can't answer that. I don't recollect.

Q. Well, the last one that you recollect attending? A. I attend as many as I possibly can, sir. I have other political commitments. I might come early, I might come late, but I do try to make them all.

Q. Well, the last one that you remember meeting or attending? A. I'm sorry, I can't give you an honest answer.

[1,628] Q. Do you remember where it was? A. I'm quite sure that all of the meetings lately have been at the IBEW hall on Elizabeth Avenue, right off Hampton.

Q. Both the Union meetings and the so-called Fund meetings? A. The Union meetings are held there too, sir, and the Fund meetings are held there.

Q. Did you ever see any minutes from those meetings, those Fund meetings? A. No, sir.

Q. Are you a member of the Fund? Oh, yes, sir.

Q. Do you have a membership card? A. I don't think so, sir. But I think that my contribution indicates I'm a member of the Fund.

Q. Did you ever get a receipt for any cash that you paid into the Fund? A. Not to my knowledge, sir.

Q. Did you ever ask for one? A. No, sir, I never have.

Q. You say you have collected from Union members also? A. Yes, sir.

Q. Out on jobs? A. Yes, sir.

Q. Did you ever distribute any of the so-called Voluntary [1,629] cards? A. Yes, sir.

Q. Under what circumstances or conditions would you distribute those cards, pass them out? A. You mean like a new man coming on the job?

Q. Yes. A. I would hand the card to him and ask him to read it and——

Q. Just as soon as he came on the job? A. I would say within that day, I would say, sir. Yes. I mean not a week later, but when it would be feasible, reasonable to do it, because usually they have to make out their W-2 forms and their state forms, and then I would hand——

Q. All at the same time? A. Usually it happens that way, sir.

Q. Did you make an explanation to these people as to how much they were to pay into the Fund? A. I don't think I've ever had to make an explanation, but I would have been happy to do it. If they asked me the question, I would say that most of them that work in our shop had worked in the area before and were familiar, I am sure, with the Voluntary.

Q. If they didn't work on one of your jobs before, they knew what the amount was before they came? [1,630] A. Yes, sir, I would say they did. I can't recollect anybody asking me, "How much is the Fund?" But I'm the one that handed the card to them and asked them to read it.

Q. You are saying that some fellows coming in here from Oklahoma, who had never worked—— A. I never had that, sir.

Q. Or from another local? A. Most of the men that have been on the jobs have been members of the Union, and a few, maybe men that have worked in this jurisdiction for some time, so I have never had anybody come from Oklahoma and Texas, to my recollection.

Q. Let me call your attention to a man who was an out-of-towner. A. Um hmm.

Q. Now, his rate of pay was what? Two dollars a day? A. Rate of pay?

Q. Well, rate of contribution; Voluntary contribution. A. Two dollars; yes, sir.

Q. His rate was $2.00 a day? A. Right, sir.

Q. And your St. Louis people were 50 cents a day, or a dollar a day, depending on what time it was? A. Right.

Q. Did the out-of-towner ever ask you why he was charged [1,631] $2.00 and the St. Louis man was charged only 50 cents? A. No, sir.

Q. Did you ever think it advisable or fair to tell him why there was a difference? A. Never came across my mind, sir.

Q. It didn't come across your mind that one person was paying four times as much as another one, on the same job? A. No, sir. That's none of my affair.

Q. But the new man coming on the job from out of town who would ask you how much he was to pay at the time you gave out the card, if he did ask you to pay—— A. Which he did not, sir.

Q. None of them ever did? A. Not to my knowledge, sir. I don't recollect that any of them said, "How much is it?" "How much is the Voluntary Fund today or tomorrow?" Or anything; not to my knowledge.

Q. You mean the word was so well circulated? A. I am not saying that, sir.

Q. Among all pipefitters, that they knew in advance on coming on a 562 job? A. Sir, I am not trying to presuppose what any of them had in their mind.

Q. Yes, sir. Did you make collections during the period of time that the Callanan Gift Fund was being operated?

[1,632] Mr. Daly: I will object to that question, ask it be stricken, the jury instructed to disregard it, and a mistrial be declared.

The Court: All right. The record will show your objection, and it will be overruled.

The Witness: I am supposed to answer, sir?

The Court: Yes.

The Witness: Would you state it again?

Q. Did you make collections during the period of time that the Callanan Gift Fund was being operated? A. I would imagine that I did, sir, just like I always have.

Q. Do you know how much was collected in the Callanan Gift Fund?

Mr. Daly: I object to that, Your Honor, and ask that be stricken; not relevant or material.

The Court: I think it's been in there anyway. I will sustain the objection.

Mr. Riddle: I believe I have nothing further to ask this witness.

The Court: Any redirect of this witness?

Mr. Randall: I'd like to ask a question too.

[1,633] **Redirect Examination.**

By Mr. Randall:

Q. Mr. Young, do you know whether or not the men who work under the jurisdiction of Local 562 who are not members, work rather regularly in this jurisdiction? Do you know what Mr. Riddle calls the out-of-towners, or regular people, that work rather regularly in this jurisdiction? A. Would you state it one more time?

Q. Sir?

The Court: What he wants to ask you, sir, is whether or not you, of your own knowledge, have any recollection of a group of people who were not regular members of 562, who are regularly employed in this jurisdiction. Is that——

The Witness: There are.

Q. (By Mr. Randall) And do you know the policy of the Local as to which local, other local they refer to jobs first? A. I would assume ones in the eastern half of Missouri.

Q. And those two locals are located where? A. I believe in Cape Girardeau and Hannibal, Missouri.

Q. Hannibal? A. Yes, sir.

Q. And it is only when men are not available in those two locals, including the St. Louis Local, that people are brought in from out of state; is that correct, sir? [1,634] A. I would believe that, sir. I'm sure that is what happens.

Q. And that happens rather infrequently, doesn't it, Mr. Young? A. Well, we have got a lot of people working, sir. It's mostly, I would say, tradesmen from the eastern half of Missouri that work on most of the jobs.

Q. I see. And when you testified that people that came to work for you, they were these people in eastern Missouri; is that correct? A. Most, I'd say 90 per cent of them, sir, were Missourians.

Mr. Randall: Thank you.

Anything else, Mr. Riddle?

Mr. Riddle: I have nothing further.

The Court: All right. Step down.

(Witness excused.)

WILLIAM KRUSSEL,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. State your name, please? A. William Krussel.

[1,635] Q. Where do you live, Mr. Krussel? A. St. Louis County.

Q. Give your street address, would you please? A. 3025 Wells Road.

Q. And is that St. Louis County? A. Yes, sir.

Q. In what part of the County is that located, Mr. Krussel? A. South end of the County.

Q. What is your business or occupation? A. I'm a pipefitter doing refrigeration service.

Q. For whom are you employed? A. L. V. Fleiter Company.

Q. And where are they located? A. 3516 Rutger.

Q. How long have you been with this company, Mr. Krussel? A. Twenty-three years.

Q. And what type of work does the Fleiter Company do? A. Mostly refrigeration installation and——

Q. Are there other pipefitters on that job, other than yourself? A. Yes.

Q. How many are on that job? Do you know? A. Six.

Q. Now, you have been a member of Local 562, you say, [1,636] for twenty-three years? A. That's right.

Q. And you have been employed down at Fleiter Company that entire time; is that correct? A. That's right.

Q. Now, are you familiar with the Voluntary card? A. Yes.

Q. And have you signed the Voluntary card yourself? A. Yes.

Q. Do you contribute yourself into the Voluntary Fund, Mr. Krussel? A. Very little since 1963.

Q. Very little. All right. Now, has anyone ever said anything to you about your failure to contribute? A. No, sir.

Q. Are you still working for the same company you always did? A. Yes, sir.

Q. Now, do you know whether the other pipefitters were working for the Fleiter Company, whether or not they contributed? A. I don't know.

Mr. Daly: You don't. I have no further questions.

[1,637] **Cross-Examination.**

By Mr. Riddle:

Q. Sir, you have been with this one company for how many years? A. Twenty-three years.

Q. Is that the only company you have worked for in twenty-three years? A. Yes.

Q. You haven't been assigned out of the hall, out of the Union hall, on a job then? A. No, sir.

Q. For that period of time? A. No, I haven't.

Mr. Riddle: I have nothing further to ask.

The Court: Any redirect examination?

Mr. Daly: Just one question.

Redirect Examination.

By Mr. Daly:

Q. Mr. Krussel, if one leaves the Fleiter Company down there, and you need another pipefitter, does the hall send another man down? A. Yes, I think so.

Q. Are the men there hired out of the hall just like anyone else? [1,638] A. I think so, as far as I know.

Q. And your wage scale is what? A. Five sixty.

Q. That is the same as the rest of the pipefitters; is that right? A. That's right.

Mr. Daly: That is all.

Recross-Examination.

By Mr. Riddle:

Q. You don't know whether the other people who are sent out by the hall pay into this Fund or not? A. I don't.

Mr. Riddle: That's all.

The Court: All right. Step down.

(Witness excused.)

FLOYD L. KIMMEL, JR.,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Would you state your full name, please, sir? A. Floyd L. Kimmel, Jr.

Q. Where do you live? A. 714 St. Louis Road, Collinsville, Illinois.

[1,639] Q. Are you a member of Pipefitters Local 562? A. Yes, I am.

Q. How long have you been a member? A. A little over two years.

Q. How long have you been on your present job? A. Thirteen months.

Q. Have you always contributed to the Pipefitters Voluntary Fund? A. At one time, I didn't.

Q. And when you didn't contribute, did anybody say anything to you about your failure to contribute? A. No.

Q. And have you worked continuously? A. Yes, I have.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you say at one time you didn't pay in. When was this? A. 1966, I believe it was. My family was sick with hepatitis and I fell behind one time for about five weeks, and I never did make it up.

Q. Did the foreman know of your family's condition? A. Yes. Well, at that time, I was taking the Voluntary [1,640] contributions down to the Local, because I was working for a small contractor and there was no one on the job collecting.

Q. Well, did you tell them down at the Local about your family? Did they know about your family's hardship? A. I don't believe it was asked, and I didn't volunteer the information.

Q. But your foreman knew about it? A. My foreman knew about it; yes.

Q. You dropped off payment for about how long? A. About five weeks.

Q. Otherwise you have been paying every week? A. Right.

Q. Sir, you became a member of 562 in 1966? A. Yes.

Q. Were you an apprentice before that time? A. No.

Q. Were you transferred from another local into 562? A. No. I came in working on a permit at first.

Q. On a permit at first? A. On a permit.

Q. How long did you work on Local 562's jobs under permit? A. Six months.

Q. During that time, did you pay regular dues and [1,641] assessments into the Union? A. No. There was no dues or assessments at that time.

Q. What about Voluntary payments? Did you—— A. I made a Voluntary contribution.

Q. Did you have any dues and assessments, or regular dues and assessments to any local during that period of time? A. No.

Q. What job were you working on during that period? A. When I was working under permit?

Q. Yes. A. With Dougherty Company up at the powerhouse.

Q. Did you pay your dues then, or pay your money into this Fund then in cash to the foreman on the job? A. Right.

Mr. Riddle: I have nothing further to ask him.

The Court: Any redirect?

Mr. Randall: No redirect, Your Honor.

The Court: Step down. Go out that way.

(Witness excused.)

JAMES A. LAWLER

being first duly sworn, testified in behalf of the defendants as follows:

[1,642] **Direct Examination.**

By Mr. London:

Q. State your name, sir. A. James A. Lawler.

Q. And where do you live, Mr. Lawler? A. Sappington, in Sappington, Missouri.

Q. Mr. Lawler, are you a member of Pipefitters Local 562? A. I am.

Q. Are you familiar, sir, with the Voluntary Fund? A. Partly.

Q. Do you contribute to the Fund, sir? A. Yes, sir.

Q. Are your contributions to the Fund voluntary, sir? A. Yes, sir.

Q. Have you ever attended any meetings of the Voluntary Fund? A. No, sir.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Are you related to Mr. John Lawler, one of the defendants in this case? A. No, no relation at all.

Q. You say you are partly familiar with this Fund. What [1,643] did you mean by that, sir? A. Well, I know we use it for political means.

Q. Political meetings? A. I guess that's it.

Q. Is that the only thing you know about it? A. That's about all I know about it.

Q. Have you paid all the time? A. Yes, sir.

Q. Never missed a payment? A. No, sir.

Q. Have you been a member of 562 for how long? A. About twenty-six years.

Q. How many different jobs have you worked on? A. That would be hard to say. I don't know.

Q. Do you get assigned out of the hall on various jobs? A. Well, yes.

Q. How often do you get assigned on the average period of—— A. Well, I have worked for one company now about fifteen years, and I just go from one job to another on them.

Q. Well, do you get assigned out of the hall? A. No, no.

Q. You stay with that company? A. That's right.

Q. Sir, is it your understanding that all this money [1,644] that is paid in is used for political purposes? A. Yes, sir.

Q. All of it? A. Well, that, and I suppose it is all political purposes; yes.

Q. This is your understanding of it? A. That's right.

Q. Would you be willing to pay into it if it were used for other purposes? A. Yes, I would.

Q. If it would benefit the Union? A. That's right.

Q. Do you consider the payments you make into this Fund for the Union's benefit? A. Yes, I certainly do.

Q. Do you consider the assessments that you pay beneficial to the Union also? A. Oh, yes.

Q. And dues? A. And dues.

Q. What do you figure it costs you a day to work on one of these, to work as a pipefitter? A. Well, my assessments are three and three-quarters per cent. Dues are three and a half a month, and fifty cents a day [1,645] to the Voluntary Fund.

Q. This is what you consider the cost of working on the job? A. That's right.

Mr. Riddle: Yes, sir. That's all.

Mr. London: That's all.

The Court: Step down. Go out that door.

(Witness excused.)

ARTHUR TONEY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. State your name, please. A. Arthur Toney.

Q. Where do you reside, Mr. Toney? A. 6617 Marmaduke.

Q. Where is that located? A. St. Louis.

Q. And what is your business or occupation? A. Pipefitter.

Q. And do you belong to a union, sir? A. Local 562. [1,646] Q. Now, how long have you been a member of Local 562? A. Since January, 1948.

Q. That's about twenty years? A. Twenty years.

Q. Are you familiar with the Voluntary card? A. Yes, I am.

Q. Have you contributed to the Voluntary Fund? A. Yes.

Q. And you contribute on a regular basis? A. No. I usually let it go for about a month or so, and then pay it.

Q. Now, you let it go maybe a month without making any contributions at all? A. It's gone as high as $85.00 or so.

Q. During that period that you'd let it go, did anybody say anything to you? A. No, sir.

Q. Did anybody ever call you up, or talk to you about your contribution? A. No, sir.

Q. Are you paid up now? A. No, sir.

Q. How many weeks has it been now since you have paid? A. About four weeks.

[1,647] Q. Anybody ever commented anything to you, or contacted you? A. No, sir.

Q. Who do you work for, Mr. Toney? A. Corrigan Company.

Q. What business are they in? A. Pipefitting.

Q. And what type of company is Corrigan? A construction company or—— A. They are piping contractors.

Q. Piping contractors? How long have you been with Corrigan? A. A year last June.

Q. And did they do work in different places, or do you always work in the same place? A. No; different places.

Q. Wherever they happen to have a job? A. That's right.

Q. Who did you work for before you were with Corrigan? A. Moritz. Carl Moritz Heating Company.

Q. How long were you with them? A. Four or five months.

Q. When a job closes down, or something, and you want work, how do you get your work? [1,648] A. I go to the hall.

Q. And they assign you out from there; is that right? A. Yes, sir.

Mr. Daly: He's your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you said you were all paid up now, except for the last thirty days? A. Yes, sir; just about four weeks.

Q. You don't have any other delinquencies, nothing else owing for back work? A. No, sir. To the best of my knowledge, I don't.

Q. You have tried to keep current all the time? A. Yes, sir.

Q. You might get a week or two, or three, or four weeks behind, but then you catch up? A. Yes, sir.

Q. How did you make your catch-up payments? A. Cash.

Q. Down at the hall, or how do you—— A. At the hall. Yes, I go in with it.

Q. Who do you usually pay it to? A. It was Eddy Beck, and now Mr. Seaton.

Q. Mr. George Seaton? [1,649] A. Yes, sir.

Q. How long have you been paying it to Mr. George Seaton? A. Oh, last three or four times I was there.

Q. Sir, what does it cost you a day to work on a job under Local 562? A. It costs me a day?

Q. Yes. For your Union affiliation? A. Oh, you mean the dues or——

Q. The total amount of cost per day for you to work on a 562 job? A. We have an assessment that the company, the employer takes out. That is three and a quarter per cent of what we make.

Q. Do you know about how much that costs you a day? A. No, I don't. I make $40.00, I imagine.

Q. Sir? A. I make about $40.00. Three and a quarter per cent of that—three and three-quarters, I believe it is—three and three-quarters per cent.

Q. Then what other charges do you have? A. Once a month we pay $3.50 dues.

Q. All right. A. And that's all.

Q. What about this payment that you are behind in a month now? How much do you figure that out a day? [1,650] A. That is a Voluntary Fund, and it is 50 cents a day.

Q. Fifty cents a day? A. If you want to pay it.

Q. Yes, sir. You have elected not to pay it, have you? A. No, I haven't.

Mr. Riddle: I have nothing further.

Mr. Daly: No redirect.

The Court: All right. Step down.

(Witness excused.)

LEO F. PIERSON,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Pierson, would you state your full name? A. Leo F. Pierson.

Q. Where do you live, sir? A. 3345 Steed.

Q. What city? A. Florissant.

Q. Are you a member of Pipefitters Local 562? A. Yes, sir.

Q. How long have you been a member? A. About four and a half years.

[1,651] Q. Have you always contributed to the Voluntary Fund? A. Yes.

Q. Have your contributions been voluntary? A. Yes, sir.

Q. Have you ever attended any of the meetings of the Fund? A. Yes, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Mr. Randall asked you if you ever attended any of the meetings of the Fund. A. Yes, sir.

Q. When did you first hear of a meeting of a Fund? A. Of a Fund?

Q. Of a Fund? How are you spelling it? A. F-u-n-d.

Q. Yes. What did you first hear about a Fund meeting? A. When we got a card in the mail.

Q. When? A. I believe it was '64; the summer of '64.

Q. Do you recall what the card said? A. No, I don't. Said there would be a meeting of the Fund.

Q. Just called it Fund? A. No. The Voluntary Health and Welfare Fund, Political [1,652] Fund.

Q. You attended that meeting? A. Yes, sir.

Q. Who presided at it? A. Mr. Callanan.

Q. Mr. Callanan? A. Yes, sir.

Q. Where was it held? A. At the Electricians hall on Elizabeth Avenue.

Q. Do you remember what month of the year? A. No, sir, I don't recall. I believe it was around June or July.

Q. Do you remember what the business was? A. They were talking about various candidates that they thought we should back.

Q. Did you vote on anything? A. I don't believe we did.

Q. You say you pay each and every week? A. Yes, sir.

Q. How long have you been working on the job you are on now? A. Seven months.

Q. How did you get assigned out there? A. I was called one night.

Q. From the hall? [1,653] A. From the hall.

Q. Who called you from the hall? A. Ed Steska.

Q. Sir, have you taken your money down to the hall on occasions as cash? A. One time.

Q. Who did you give it to when you went down there? A. John Lawler, Jr.

Q. Do you know Eddy Beck? A. Yes, sir.

Q. Do you know if he is related to Mr. Callanan? A. Yes, sir.

Q. What is that relationship? A. Son-in-law.

Q. Do you know Pat Stieferman? A. No, I don't.

Q. You don't know who she is, even? A. No, sir.

Q. Never heard of her? A. I believe it is one of the ladies that work up in the office.

Q. Do you know if she is related to any of these defendants? A. No, sir, I don't.

Mr. Riddle: You don't know that. I have nothing [1,654] further.

The Court: Any redirect? Go out that door.

(Witness excused.)

FRANK O'NEIL,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Frank O'Neil.

Q. Where do you live, Mr. O'Neil? A. 709 Holiday, Hazelwood, Missouri.

Q. Mr. O'Neil, are you a member of Pipefitters Local 562? A. Yes, I am.

Q. Do you contribute to the Voluntary Fund? A. Yes, I do.

Q. Are your contributions to the Fund voluntary? A. Yes, they are.

Q. Have you ever attended any of the meetings of the Voluntary Fund? A. Yes, I have.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

[1,655] Q. How long have you been paying into this Fund? A. Oh, I would imagine as long as it's in existence.

Q. Are you a foreman? A. At times; yes, sir.

Q. You have never missed a payment? A. Oh, yes.

Q. Caught up with it? A. If necessary; yes.

Q. Well, did you catch up with one that you missed? A. Yeah; several.

Q. But you have never failed to pay, although some of your payments were made late? A. Oh, I wouldn't say I never failed to pay; no, sir, nothing like that. No. I maybe still owe money.

Q. You still may owe some money? A. Yes, I do.

Q. Well, do you say that you may, or do you owe some money now? A. Well, to put it frankly, yes, I do.

Q. How much do you owe? A. I have no idea.

Q. Is it a hundred dollars? A. Possibly.

Q. More than that? [1,656] A. I would think not; no.

Q. You think it is less than a hundred? A. Yes.

Q. How long have you been owing? A. Golly. Records are not kept on that, as far as anybody that I know.

Q. You say the records aren't kept as far as how much you owe? A. As far as my records, I don't keep any records; no. I could find out, possibly, if I had to.

Q. How could you find out? A. Well, by back-checking myself.

Q. Could you go down to the hall and find out how much you owe? A. Oh, I think so; yeah.

Q. That is because they keep the records down there? How much you pay and how much you don't pay? A. I would think they would. Any organization must keep some form of records.

Q. They keep records down there on your regular assessments, on your regular dues? A. Oh, yes. Yes, because that is taken out of the check. Yes, they do do that.

Mr. Riddle: I have nothing further.

[1,657] Mr. London: That's all.

The Court: Step down. Go out that door.

(Witness excused.)

JOSEPH DUKEMAN,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. State your name, please. A. Joseph Dukeman.

Q. Where do you reside, Mr. Dukeman? A. 1222 Hobson, Hudson Hills, Ferguson.

Q. With whom do you reside? A. My wife, family.

Q. Are you buying that place out there? A. Yes, sir.

Q. What is your business or occupation? A. Steamfitter foreman.

Q. And do you belong to a union? A. Yes, sir.

Q. What union do you belong to? A. 562.

Q. How long have you been a member of Local 562? A. Since 1959.

[1,658] Q. 1959. That would be about nine years? A. Yes, sir.

Q. And where are you employed at the present time? A. Climate Engineering Company.

Q. Where are they located? A. 5100 Claxton.

Q. How long have you been with Climate Engineering Company? A. Approximately six months.

Q. How did you happen to get that job? A. I was finished up at a job, my last place, and went to the hall, and the hall told me to report to these people.

Q. I see. And who did you work for prior to the time that you worked for Climate Engineering Company? A. General Installation.

Q. Now, are you familiar with the Voluntary Fund? A. Yes, sir.

Q. And did you sign a Voluntary Contribution card? A. Yes, sir.

Q. And do you contribute to the Fund? A. Yes, sir.

Q. Are your contributions voluntary, Mr. Dukeman? A. Yes, sir.

Q. Do you contribute some of the time, or all of the [1,659] time, most of the time? How do you make your contributions? A. All the time, but I don't pay it every week. I leave it ride sometimes two or three months and then make out a check.

Q. Do you sometimes get behind? A. Yes, sir.

Q. Now, at any time that you were behind in your contributions of the Voluntary Fund, did anyone ever come out and talk to you about it? A. No, sir.

Q. Did you ever lose any hours, or anything? A. No, sir.

Q. Did they ever fail to refer you out to a job because you were behind? A. No, sir.

Q. Are you current at the present time? A. No, sir; maybe two or three weeks in arrears now.

Q. The money that you contribute, do you contribute voluntarily? A. Yes, sir.

Mr. Daly: He is your witness.

Cross-Examination.

By Mr. Riddle:

Q. You are all current, except for two or three weeks? A. Yes, sir.

[1,660] Q. All the years you have been, well, since January of '63 at least, you have paid each and every week the amount that was fixed? A. Yes, sir.

Q. Who fixed the amount that you paid? A. Well, it was voted on to pay 50 cents a day.

Q. It was voted on that you would all pay 50 cents a day? A. 562 members; pay 50 cents a day.

Q. Was that at the Union hall? A. Yes, sir.

Q. Voted on that all the out-of-towners pay $2.00 a day? A. I believe so; yes, sir.

Q. What do you figure it costs you a day to work on a Local 562 job? A. About a dollar seventy-five cents for my assessments and dues, and fifty cents for my political.

Q. One dollar seventy-five cents for your dues and assessments? A. Yes, sir.

Q. And 50 cents a day for your political? A. Yes, sir. And three and three-quarters per cent of my gross.

Q. You figure all of these are a cost of what it costs you a day to work? [1,661] A. Well, yes, sir, this is what I pay in.

Mr. Riddle: Yes, sir. I have nothing further.

Mr. Daly: No redirect.

The Court: All right. You may go out that door.

(Witness excused.)

JOHN B. MARSHALL,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Marshall, would you state your name, please? A. John B. Marshall.

Q. Where do you live, sir? A. 4855 Shellfont Road.

Q. Are you a member of Pipefitters Local 562? A. Yes, sir.

Q. Have you always contributed to the Voluntary Fund? A. Yes, sir.

Q. Did you sign one of the Voluntary Contribution Agreement cards? A. Yes, sir.

Q. Have your contributions been voluntary? A. Yes, sir.

Mr. Randall: You may inquire.

[1,662] **Cross-Examination.**

By Mr. Riddle:

Q. You paid each and every week for how long? A. I can't quite remember, sir, how long.

Q. Never missed? A. No, sir.

Q. What kind of jobs do you work on? A. I work for the Thomas J. Sheehan Company.

Q. That is a construction company? A. Yes, sir.

Q. Who do you usually pay your money to? A. I have been collecting myself.

Q. Oh, you are a collector? A. Yes, sir.

Q. Are you a steward? A. Yes, sir.

Q. All of your men pay you? A. Yes, sir.

Q. Each week? A. Yes, sir.

Q. Do you have out-of-town men working on your job? A. No, sir.

Q. Have you ever had, on one of your jobs? A. Yes.

[1,663] Q. What amount did you collect from the out-of-towners? A. Two dollars a day.

Q. On that same day, how much do you collect from your regular members? A. Fifty cents per day.

Q. Sir, do the out-of-towners know that the local boys were paying less than they were? A. Yes, sir.

Q. Did you tell them? A. Yes, sir.

Q. Did they ask you why? A. No.

Q. Never did ask you why? A. No. Not to the best of my recollection.

Q. You mean these out-of-towners who were paying more, and knew they were paying more, never asked you why? A. Well, the card explains itself, that they signed.

Q. Did they sign a different card than the regular members? A. No, sir.

Q. Well, how does the card explain it then? A. Well, I think the reading, the statements on the card are such that it is self-explanatory.

Q. You mean it self-explains the difference in [1,664] two dollars, and fifty cents? A. No, sir.

Q. Now, sir, again I come back and ask you the question: Do these people from out of town who paid $2.00, ever ask you why they paid more than the regular members? A. Not to the best of my knowledge; no, sir.

Q. And you say that they did know they paid more? A. Yes, sir.

Q. Did you ever feel obligated to explain to them why the disparity in the two rates? A. No, sir.

Q. Do you know what the reason for the disparity in the two rates is? A. Yes, sir.

Q. What is the reason why they paid $2.00, and you boys just paid 50 cents? A. Well, I don't understand the question.

Q. Well, sir, I asked you if you knew the reason for the disparity between the $2.00 payments on the one hand and the 50-cent payments on the other? A. Well, our dues is automatically collected off of our checks at three and three-quarter per cent rate, and that's why.

Q. Well, go ahead with that explanation. We haven't [1,665] heard it for some time. Go ahead and tell us again. A. Well, our dues is mandatorily and automatically checked off of our pay checkoff system. That's all there is to it.

Q. Well, what bearing does that have on the difference between the two-dollar payment and the fifty-cent payment, just because your dues are checked off? A. Well, I don't know, sir.

Q. Well, sir, isn't it because the amount, the $2.00 to the out-of-towners is increased and greater because the total of what you and the others paid amounts to just about that, namely, $2.00 a day? A. Yes, sir.

Q. Why are you reluctant to admit that? A. I didn't think I was reluctant, sir.

Q. Well, isn't it a fact that you know that it costs you about $2.00 a day, and this is the amount that it costs the out-of-towners? A. Well, I can speak for my own as three and three-quarters per cent on my dues and assessments, and 50 cents on my political contributions.

Q. That's about $2.00 a day, isn't it? A. Yes, sir, approximately.

Q. And the people from out of town are hit for the same [1,666] amount? A. Yes, sir.

Q. And if anybody ever asks you to explain that, this is the explanation you'd give if you were being honest with them?

Mr. London: I will object to the form of the question, Your Honor. It is argumentative, and assuming matters not in evidence.

The Court: He may answer.

The Witness: Yes, sir.

Q. (By Mr. Riddle) Yes, sir. You still say, in view of that, that these are voluntary payments? A. Yes, sir.

Q. What do you mean by voluntary? A. Giving of one's own free will.

Q. Yes, sir. Do you understand that when you pay your telephone bill, that is a voluntary payment? A. No, it is not, sir. I don't believe it is, because I would expect your telephone would be disconnected if you didn't pay your bill.

Q. But you voluntarily pay it, don't you? A. No. Well, I voluntarily pay it, yes, but realizing that I would lose the telephone service if I didn't.

Q. Yes, sir. Are you saying that these payments, the [1,667] out-of-towners pay $2.00, as compared to the 50 cents that you fellows pay into the Fund? A. Would you repeat this, sir?

Q. Are you saying that the out-of-towners, who pay $2.00 per day, are of their own free will and volition paying four times as much as you are into the Fund? A. Yes, sir. They all signed the cards.

Q. They signed those cards the day they reported for work, didn't they? A. Yes, sir.

Q. Did anybody ever refuse to sign a card when he reported for work? A. No, sir.

Q. So you don't know whether you'd put him to work or not, do you? A. That's correct, sir.

Q. You have never had that experience, have you? A. That's right.

Q. Of all the people that you handed out these cards to, none of them had the courage to say, "No, I won't sign"?

Mr. Daly: I will object to that.

Q. (By Mr. Riddle) Or none of them didn't sign anyway?

The Court: Be sustained.

Q. (By Mr. Riddle) You say you have never had that [1,668] experience of somebody refusing to sign? A. That's right, sir.

Q. Did you ever have the experience of somebody refusing to pay you? A. No, sir.

Q. Sir, do the boys down at the Union hall send the new members out to your job when you need additional help? A. No, sir, not necessarily.

Q. Generally, that is where you get—— A. They transfer from one job to another job through the company that I work for.

Q. And the Union hall is in on that transaction too, aren't they? A. They are notified of the changes.

Q. Yes, sir. Sir, did you collect right on along during the period of the Callanan Gift Fund collection?

Mr. Daly: We object to that, Your Honor, ask it be stricken, the jury instructed to disregard it, and a mistrial be declared. It is not relevant to any of the issues involved in this case, not tending to prove or disprove any of the issues in this case; highly prejudicial.

The Court: The request will be denied. Motion will be overruled.

The Witness: No, I personally did not collect, sir, [1,669] during that period of time.

Q. Did you pay during that period of time? A. No, sir.

Q. Do you know if the out-of-towners paid four times more than the—— A. No, sir.

Redirect Examination.

By Mr. Randall:

Q. Mr. Marshall, how long have you been with the Sheehan Company? A. Thirteen years.

Q. You say that the men that have been working for you have been transferring from one job to another along with you? A. Yes, sir.

Q. The people that Mr. Riddle refers to as out-of-towners, are they from the Cape Girardeau or Hannibal local? A. Yes, sir, to the best of my knowledge.

Q. And they have been working with you all these years too? A. That's correct.

Q. Have you ever attended one of the Political Fund meetings down there at the hall? A. Down where, sir?

Q. Down at the Electricians hall? [1,670] A. Yes.

Q. And did these people, who are members of the Cape Girardeau and Hannibal locals, also attend those meetings? A. Yes, sir, to the best of my knowledge.

Q. And were you present, and they present when the membership in the Fund voted on how much the members of those locals would pay into the Voluntary Fund? A. Yes, sir.

Mr. Randall: That's all.

Recross-Examination.

By Mr. Riddle:

Q. Sir, do you remember any boys from Cape or from Hannibal who were at this meeting, who were in favor of their two-dollar a day payments? A. I can't recall any particular names; no, sir. Not at the moment.

Q. You just said that some of them were there. A. Yes, sir; different individuals spoke.

Q. From those unions? A. From those locals; yes, sir. I believe a business agent for that local was there.

Q. Oh, the business agent from the Cape local or from the Hannibal local? A. From the Cape, I believe.

[1,671] Q. Did he speak in favor of it? A. Yes, sir.

Q. Did he? A. (Indicating yes.)

Q. Anybody else? A. Not that I can recall right at the moment.

Q. He spoke in favor of his boys paying four times as much as you? A. Yes, sir.

Q. And he is their representative? A. Yes, sir.

Q. Looking out for their interests? A. Yes, sir.

Mr. Riddle: That's all.

Mr. Daly: That's all.

The Court: That is all. Go out that way.

(Witness excused.)

JOHN F. MARSH,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your full name, sir. A. John F. Marsh.

[1,672] Q. Where do you live, Mr. Marsh? A. Annapolis, Missouri.

Q. What do you do for a living? A. I am a pipefitter, welder.

Q. Are you a member of some union, sir? A. Yes, sir.

Q. What union are you a member of? A. 318.

Q. That is out of Cape Girardeau? A. Yes, sir.

Q. Have you had occasion, sir, to work on jobs under the jurisdiction of Pipefitters Local 562? A. I have.

Q. And have you contributed, sir, to the Voluntary Fund? A. I have.

Q. Have your contributions been voluntary? A. Yes, sir.

Q. Have you, sir, attended any of the Voluntary Fund meetings? A. Yes, sir.

Q. Did you attend a Union meeting of 562 before the Voluntary Fund meeting? A. The same night.

Q. Who presided at the meeting, Union meeting, sir? [1,673] A. Ed Steska.

Q. Who presided at the Voluntary Fund meeting? A. Lawrence Callanan.

Q. As a member of 318, sir, and not a member of 562, were you permitted to vote at the Voluntary Fund meeting? A. At the Voluntary Fund meeting, yes.

Q. Were you allowed to vote at the Union meeting? A. No.

Q. Was a vote taken, sir, as to whether or not to continue the Voluntary Fund? A. It was.

Q. And were you permitted to vote on that, sir? A. Yes, sir.

Mr. London: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. This was a fairly recent meeting? A. Yes, sir.

Q. Within the past few months? A. Yes, sir.

Q. Is that the only meeting of that sort you ever attended? A. In St. Louis, yes.

Q. Well, you never attended any Voluntary Fund meetings [1,674] down in southeast Missouri, did you? A. No.

Q. This is the only one that you attended? A. That's right.

Q. Do you remember the month? A. It was in June, I think.

Q. Of this year? A. Yes, sir.

Q. Just about three months ago? A. Yes, sir.

Q. How long have you been paying into this Fund up here? A. All the time that I have worked in 562's jurisdiction.

Q. That's been for five years or so? A. Since '64.

Q. Since '64? A. Yes, sir.

Q. Do you refer to it as a doby? A. No.

Q. Have you heard the word doby used? A. Oh, I don't know. I probably have. Yeah, I have heard it used; yeah.

Q. Sir, you boys are being paid, I mean are being charged, or something, paying $2.00 a day for working on a 562 job? [1,675] A. Being what now?

Q. Being charged, or allowed to voluntary contribute, or assessed, or something. In any event, you pay $2.00 a day, don't you? A. Yes.

Q. Yes. Voluntarily? A. That's right.

Q. Do you know what the St. Louis boys are paying? A. No, I don't know.

Q. Well, at this meeting you attended, did you hear anybody say what they were paying? A. No.

Q. Sir? A. No. No.

Q. Well, you said that there was a vote taken. Well—— A. That vote was whether to continue the Voluntary Fund, or discontinue it.

Q. And did it say to continue it at a certain rate? A. No, it wasn't continued at no certain rate.

Q. Sir, do you know that the St. Louis boys are just being charged 50 cents? A. No, I don't know.

Q. You don't know that? A. No, I don't believe I definitely know it. No.

[1,676] Q. Have you heard it? A. I have probably heard it; yes.

Q. Well, have you or not? A. Yeah, I've heard it.

Q. Sir, did you ever ask anybody for an explanation as to why they were being charged four times as much as you? A. No.

Q. You never asked anybody for an explanation? A. I don't feel like they are charging me, sir.

Q. You think—what do you think the St. Louis boys are doing? Do you think they are being charged, or are they just volunteering? A. I would guess that would be voluntary; yes.

Q. Well, would you rather volunteer 50 cents a day than $2.00 a day? A. Well, I guess most anyone would.

Q. Yes, sir. Well, then did you ever wonder why you were not allowed to contribute voluntarily 50 cents a day? A. No, I never.

Q. You never thought about that? A. No. No, I wasn't a member of 562, and we run our own assessments, and we run our own——

Q. Assessment down there? A. Assessment and union dues. We have our own union dues.

[1,677] Q. Down at Cape? A. Yes.

Q. And you figure you just let the boys here in St. Louis run their own assessments and union dues? A. Well, I am a-working under their jurisdiction.

Q. And so whatever you say, they abide by it? A. Well, I wouldn't say that.

Q. What would be the alternative if you didn't abide by it? A. There wouldn't be any alternative.

Q. Have you ever tried? A. No. I have always voluntarily contributed. I never did try; no.

Q. Always just gladly gave them $5.00 out of your paycheck each week? I mean $10.00? Just gladly threw $10.00 down? A. Yeah. Yeah, absolutely. Yes, sir.

Q. Forty dollars a month? A. Yeah. They pay me good. Why wouldn't I? Yeah; absolutely.

Q. It's because you get paid by them pretty well is the reason you pay it, isn't it? A. Well, what do you mean, paid by them?

Q. Well, your say you get paid pretty good, so that's [1,678] the reason? A. Our hourly wage rate is good; yes.

Q. Is it any better than the St. Louis boys on the same jobs? A. Same; same pay. On the same job, it is the same pay. Our scale isn't as high in Cape as it is in 562.

Mr. Riddle: That's all.

The Court: Step down. You can go out that way.

(Witness excused.)

RAYMOND SEABAUGH,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. Would you state your name, please? A. Raymond Seabaugh.

Q. Where do you reside, Mr. Seabaugh? A. Jackson, Missouri.

Q. What is the street address? A. 806 Coreen Street.

Q. What is your business or occupation? A. I am a pipefitter.

Q. How long have you been a pipefitter? A. For about twenty-two years.

[1,679] Q. And do you belong to a union, Mr. Seabaugh? A. Yes, sir.

Q. What union do you belong to? A. Local 318, Cape Girardeau.

Q. And how long have you been a member of 318? A. Twenty-two years.

Q. Now, who are you presently working for? A. A. E. Burke.

Q. And who are—what is A. E. Burke? A. Plumbing, heating and air conditioning contractor.

Q. And where are they working at the present time? A. Southeast State College.

Q. And how many fitters are on that job? A. Ten.

Q. How long have you been on that job? A. About four months.

Q. Now, is that a job under 318 jurisdiction or 562 jurisdiction? A. The pipefitting is under 562.

Q. 562. Now, have you worked under 562 jurisdiction prior to this? A. Yes, sir.

Q. For how long? Off and on? A. About ten years off and on.

[1,680] Q. What percentage of the time did you work for 562 jurisdiction rather than 318? A. About 75 per cent.

Q. In other words, about three-fourths of the time you are working under 562 jobs rather than your own local? A. Yes.

Q. Now, do you contribute to the Voluntary Fund? A. Yes, sir.

Q. And how much do you contribute to the Voluntary Fund, sir? A. Two dollars per day.

Q. And has anyone ever told you you had to contribute? A. No, sir.

Q. And has anyone told you if you didn't contribute you could not work on a 562 job? A. No, sir, they haven't.

Mr. Daly: He is your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, what do you figure your dues and assessments down at your Cape local costs you a day for eight hours' work? A. Dues and assessments?

Q. Yes. A. The dues is a dollar a day, and—I mean assessments, [1,681] a dollar a day, and the dues is six dollars and a quarter per month.

Q. Sir, what does it cost you to work on a St. Louis job, a 562 job? A. It doesn't cost me nothing. I just voluntarily pay it.

Q. Did you begin to voluntarily pay it the first day you worked on the job? A. Yes, sir.

Q. Signed a card the first, within the first half hour after you arrived? A. After I read the card; yes, sir.

Q. After you read the card and you agreed to voluntarily pay $2.00? A. Yes, sir.

Q. Every day you worked? A. Yes, sir.

Q. And you have paid it ever since? A. Yes, sir.

Q. Do you know what the St. Louis boys pay who work side by side with you? A. Yes, sir.

Q. What do they pay? A. Fifty cents per day.

Q. Does that appear fair to you? [1,682] A. It does to me, if it does to them.

Q. You mean you think it is fair for you to pay four times as much as they pay? A. Well, they pay a certain per cent, I imagine, out of their check.

Q. Oh. You have been told that they pay more money for assessments? A. No, not for assessments; no, sir.

Q. What else does it cost them besides the 50 cents? A. Well, that I don't know.

Q. You haven't missed a single payment? A. No, sir.

Q. Do you call it a doby? A. No, sir.

Q. Do you hear other boys call it a doby? A. No, sir.

Q. Never heard the word doby referred to? A. We have it at our local at Cape, a doby.

Q. This $2.00, you don't recognize this as a doby? A. No; Voluntary Fund.

Q. You have been a pipefitter for a long time? A. Yes, sir.

Q. Have you worked at jobs other than 562? A. Yes, sir; 318.

[1,683] Q. Any others? A. No, sir.

Q. Never worked on any job, except one under 318 and 562? A. That's right.

Q. Do you know what this travel card is? Did you ever hear of it? A. You mean when you go from one local to another?

Q. Yes, sir. Do you know what that costs you per month? A. No, I don't really know.

Q. Does $8.00 a month refresh your recollection? A. I never did have one. I don't know.

Q. Never did have one? A. No.

Q. You'd rather pay the $8.00 a month than the $40.00 a month that you are paying into this Fund. If you had a choice, which would you rather do, pay the $8.00 or the $40.00? If you had a choice, a free will, a choice of your own? A. I'd rather not answer that.

Q. You can answer it. Just tell this jury whether or not you'd rather pay the $40.00 or the $8.00, if you had a choice? A. Well, if I'd have to leave home, I'd rather pay the $40.00. When you go out into another local, there is no telling where they send you.

[1,684] Q. My question, sir, would you rather pay the $8.00 a month as a travel card into 562 than to pay the $40.00 a month that you are paying now? If you had a

choice, which would you prefer? A. I'd just as soon pay the $40.00.

Q. You had? A. Yes.

Q. You just like to pay your money out?

Mr. London: Your Honor, I will object to the form of the question.

The Court: Yes. I think it is argumentative, Mr. Riddle.

Q. (By Mr. Riddle) Your testimony is you'd rather pay $40.00 than $8.00?

Mr. London: Same objection, Your Honor.

The Court: No.

Q. (By Mr. Riddle) Is this your testimony, sir? A. Yes, sir.

Q. Which would you rather make a day, $7.00 or $10.00? A. Well, I'd rather make the $10.00.

Q. Yet you'd rather pay $40.00 than $8.00? A. I would be getting more benefit, probably, out of it.

Q. So then what you are saying is out of the $40.00 you hope to get some benefits? [1,685] A. Which we have; yes, sir.

Q. Yes, sir. Benefits, such as higher wages; is that right? A. Yes, sir.

Q. So you are paying in order to get something in return, namely, higher wages, or whatever other benefit you could get; isn't that the reason you want to pay the money? A. Yes, sir.

Q. And isn't that the reason why you want to pay your dues and assessments to any union? A. That's right.

Mr. Riddle: That's all.

The Court: All right. We will have our afternoon recess. You can go out that door.

(Witness excused.)

The Court: Members of the Jury, bear in mind the admonition I have given you heretofore.

(Following the afternoon recess, the further following proceedings were had before the jury:)

The Court: It was a long recess, but it was necessitated by other business. OK.

DONALD TRACHTE,

being first duly sworn, testified in behalf of the defendants as follows:

[1,686] **Direct Examination.**

By Mr. London:

Q. State your name, sir. A. Donald Trachte.

Q. Spell that, please. A. T-r-a-c-h-t-e.

Q. Where do you live, Mr. Trachte? A. 1060 Paddock Drive.

Q. Married man? Family? A. Yes.

Q. Are you a member of Pipefitters Local 562? A. Yes.

Q. Have you contributed to the Voluntary Fund? A. I have.

Q. Did you sign a Voluntary Fund card? A. Yes, sir.

Q. Are your contributions to the Fund voluntary? A. Yes.

Q. Were you ever told that you had to give to the Fund in order to work? A. No.

Q. Have you ever attended any of the Fund meetings? A. Yes.

Mr. London: You may inquire.

[1,687] **Cross-Examination.**

By Mr. Riddle:

Q. Sir, about these Fund meetings, when did you first hear about this Fund? A. I believe it was in '63.

Q. '63? A. Yes.

Q. Who did you hear about it from? A. I don't recall.

Q. Where were you when you heard about it? A. I don't recall.

The Court: Speak into the mike, will you please, Mr. Trachte?

The Witness: I don't recall.

Q. (By Mr. Riddle) Well, now, you say in '63. Do you remember what part of '63? A. Not exactly.

Q. Early part? Middle part? A. Probably the latter part.

Q. Probably the latter part? A. Yes.

Q. Sir, there has been evidence heretofore offered that the Fund began, so-called Voluntary Political Fund, around January 1 of 1963. Did you ever attend an organizational [1,688] meeting of it? A. Yes, I have.

Q. The organizational meeting in the early part of 1963? January? A. Well I don't remember exactly the date.

Q. Well, let me ask you this: Did you attend an organizational meeting? A. You mean a Voluntary Fund meeting?

Q. Yes. A. Yes, I have.

Q. I am talking about the first one. A. Oh, I don't know whether I did or not.

Q. You mean you don't know whether you attended a meeting or not, an organizational meeting? A. I don't know whether I——

Q. A meeting for the purpose of just setting up the Fund? A. I don't know whether I did or not.

Q. Well, do you think you'd remember it if you attended it? A. Possibly.

Q. Well, when do you—the best you can recall, what is the very first meeting of such a Fund that you ever attended? A. I believe sometime in the summer of '64.

Q. In the summer of '64. I take it that means that the [1,689] Fund had been in existence for quite some time before that? A. I believe so.

Q. Well, the meeting you attended, is that the first time you ever heard of it? A. No. I heard of it, but I don't recall the date.

Q. Well, now, sir, somewhere along the line you say you heard of it. As I recall your testimony, you don't know who you heard it from. To refresh your recollection, did you hear about it for the first time down at the hall from some of the officers of the Union? A. I don't know whether I did or not, because at the time I didn't think that I'd ever be asked.

Q. Well, do you remember the first date that you ever were asked to sign a card? A. No, I don't.

Q. You don't remember that? A. No. No, I don't.

Q. Well, do you remember if it was in the early part of '63? In January of '63? A. I can't say for sure the first time I was asked to sign a card.

Q. Do you remember who asked you to sign a card, the first one you ever saw and signed? A. I can't say for sure the first time.

[1,690] Q. Well, do you remember where it was? A. No, I don't.

Q. Do you remember the first money you ever paid into the Fund? A. No, I don't remember the first time I paid into the Fund, the first money.

Q. Well, did you pay into the Fund before you ever attended a meeting? A. Probably.

Q. Well, when you first paid into the Fund, did you make any inquiries about the type of organization it was? A. I believe I did.

Q. And who did you make an inquiry of? A. Probably some of the men on the job.

Q. Some of the men or—— A. I mean there had been talk, but I can't name names or the date. I mean it's like——

Q. Sir, did you start paying into the Fund in early January of 1963? A. If that's when the Fund started.

Q. You began paying into it? A. Yes, sir; yes.

Q. Now, sir, how did you know how much to pay into it at that time? [1,691] A. Well, maybe I went to that meeting then. I mean I don't know for sure whether I was at the first one or not. I attended most of the meetings, so maybe I was, but as far as if you ask me what the date was, I don't know for sure.

Q. Well, sir, is it fair to say that you weren't in on the organization of it? A. That I personally wasn't in it?

Q. Yes. A. You mean that I wasn't at the first meeting?

Q. Yes. Whenever it was organized, you were not there and didn't take a part in it? A. I don't know for sure whether I was or not.

Q. Well, sir, do you know much about this Fund at all? A. A little.

Q. What is it that you do know about it? What little do you know? A. Well, I know it is a political fund to help political candidates, educational.

Q. And you know you pay into it? A. Yes, I do.

Q. Do you know how much of it is used for educational purposes? A. Not for sure.

Q. Not for sure. Well, do you have any idea? [1,692] A. No.

Q. Do you know how much is used for charity purposes? A. No.

Q. Well, how much of it is even used for political purposes? A. Not for sure.

Q. Well, by "for sure" do you have any idea whether it is one per cent or seven per cent? A. I have never inquired.

Q. Sir? A. I have never inquired.

Q. And nobody has ever told you? A. Nobody has ever told me personally; no.

Q. All of a sudden you just began paying into it? A. When the Fund started.

Q. And you paid into it every week since then? A. Yes.

Q. You paid whatever the rate that was established? A. I pay 50 cents a day.

Q. There was a time when you paid a dollar a day. Do you remember that? A. Yes.

Q. A time when you paid $5.00 a week, do you remember that? [1,693] A. Political?

Q. Oh—— A. Or Voluntary Fund?

Q. Yes. A. Yes, I remember.

Q. Do you remember that? A. Yes, sir.

Q. Well, when you first began paying, did you begin paying $5.00 a week? A. I believe so.

Q. All right. Did you vote on that proposition as to whether it should be $5.00 a day, or $10.00 a day, or 50 cents a day, or any figure? A. I don't know.

Q. Sir? A. Whether I was there for that meeting or not.

Q. Yes, sir. Sir, isn't it a fact that they just told you how much to pay, and you paid; isn't that the fact of the matter? A. No.

Q. Well, you are saying, as I understand your testimony, that you didn't participate in any decision as to what the amount of payment ought to be?

Mr. London: Your Honor, we object to this line of [1,694] questioning as being irrelevant and immaterial to the issues in this case.

The Court: Be overruled.

Q. (By Mr. Riddle) Do you understand the question, sir? A. No.

Mr. Riddle: What was the last question that I asked?

(Thereupon the reporter read the question as follows; "Well, you are saying, as I understand your testimony, that you didn't participate in any decision as to what the amount of payment ought to be?")

Mr. Riddle: You are saying that you didn't participate in any decision as to what the amount of payment ought to be?

A. You mean was I at the meeting?

Q. No. I am just saying whether or not you participated in any decision to set the rate at $5.00 a week, or a dollar a day, or any other rate? A. I don't know how to—If I was at that meeting, I voted to OK it.

Q. Did you vote for anything else, that you recall? A. No, I don't.

Q. You don't recall? A. No.

Mr. Riddle: I have nothing further to ask this witness.

[1,695] The Court: Any redirect?

Mr. London: No, sir.

The Court: Go out that door.

(Witness excused.)

JOHN R. CASEY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Casey, would you state your full name, please, sir? A. John Robert Casey.

Q. Where do you live, Mr. Casey? A. Festus, Missouri.

Q. And, Mr. Casey, are you a member of Pipefitters Local 562? A. I am.

Q. How long have you been a member? A. Twenty years.

Q. Are you familiar with the Voluntary Political Fund? A. Yes, sir.

Q. Do you recall when it was first started? A. In '63. The exact date, I can't remember.

Q. That is as far as you can remember, '63? A. Yes, sir.

[1,696] Q. Did you sign a Voluntary Contribution Agreement card? A. I have.

Q. And have you contributed to the Voluntary Fund? A. I have.

Q. Were your contributions voluntary? A. Yes, sir.

Q. Did anyone ever tell you you had to make these contributions? A. No, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, were you at any meeting in January of 1963 when this Fund was created? A. I don't believe I was at that meeting, no, sir. I was working out of town at the time and couldn't get in.

Q. You were working out of town? A. Yes, sir.

Q. And you couldn't come in? A. No, sir. I don't drive at night, and, therefore, it was late. I didn't come in.

Q. Where were you working at that time? Do you recall? A. The Tom Sauk Powerhouse.

Q. When is the first time you ever heard of it? [1,697] A. Shortly after that meeting.

Q. Who did you hear about it from? A. From my general foreman on the job.

Q. From your general foreman? A. Yes.

Q. Did he come around and talk to you about it? A. Yes, sir; brought the cards around for us to sign.

Q. He brought the cards around for you to sign. This was the first word you ever heard of it? A. Yes, sir.

Q. Did he explain to you anything to you about this so-called Fund? A. Yes, sir, and what I read on the card; yes, sir.

Q. Did he tell you that they were going to have officers? A. Yes, sir.

Q. Who did he tell you the officers were going to be? A. That, he didn't know. There was a committee set up, and he didn't tell me who they were; no.

Q. Did he tell you who the committee members were? A. Not at that present time; no.

Q. Did you ever hear about who the committee members are at any time? A. Yes, sir.

Q. You mean this Fund has a committee? [1,698] A. Voluntary Fund, yes, sir.

Q. Who are on the committee? A. Well, I can't remember right at the time, right now. I can't remember.

Q. Have you ever heard their names? A. I probably have.

Q. Well, now, sir, is this committee something that you just imagined yourself, or do you know that a committee is in existence, or, for that matter, ever was in existence? A. Well, I know there is a committee. Like I say, I can't remember the names.

Q. How do you know that there is a committee? A. Well, I've heard the other fellows talking about the committee on the Voluntary Fund.

Q. You don't know whether it is Mr. Callanan or Mr. Lawler, or Mr. Seaton, or Mr. Steska, or Mr. Burke? A. No, sir, I just can't remember who is on it.

Q. Did you have any part to play in who was going to be on this so-called committee? A. Not being at the meeting, no.

Q. So when you signed this card, were you told how much your contributions would be per week, or day? A. Per day, yes, sir.

Q. You were told how much they'd be? [1,699] A. Yes, sir.

Q. And how much were you told they'd be? A. Fifty cents for eight hours' working time.

Q. Back at that time, fifty cents for eight hours, or would it be a dollar? A. Fifty cents for Political Fund, to the best of my knowledge.

Q. You were told that is what it would be? A. Yes, sir. Voluntary Fund.

Q. Now, were you given an opportunity to volunteer to pay more than fifty cents? A. No, sir.

Q. You were just told what it would be? A. That it was voluntary. He said if you wanted to pay this, you can sign this, so I signed it.

Q. Now what about the amount that you wanted to pay? Did they tell you that amount, or did you put that on your card? A. They said it had been voted upon at 50 cents for each eight hours' working time.

Q. Then, as I understand it, sir, you were told that somebody else had decided what you were going to voluntarily pay? A. I had to be told, not being at the meeting. I didn't help at the meeting.

[1,700] Q. Sir, is this correct, that you were told by somebody else? A. Yes, sir.

Q. What you, Mr. Casey, was going to voluntarily pay? Is that right? A. If I wanted to contribute to it.

Q. Yes. And you didn't have anything at all to do with the amount that was fixed? A. No, because I wasn't at the meeting.

Q. Well, when dues and assessments are discussed at the meetings, I assume that you just go along with whatever the membership assesses, and whatever they decide that the dues will be? A. No, sir.

Q. You don't? A. We are allowed to vote.

Mr. Riddle: I have nothing further to ask this man.

The Court: All right. Any redirect?

Mr. Randall: No, Your Honor.

The Court: Step down. You can go out that door.

(Witness excused.)

DON SCHAEFER,

being first duly sworn, testified in behalf of the defendants as follows:

[1,701] **Direct Examination.**

By Mr. Daly:

Q. Would you state your name, please? A. Don Schaefer.

Q. Where do you reside, Mr. Schaefer? A. Dixon, Missouri.

Q. What is your business or your occupation? A. I am working as a steamfitter.

Q. And do you belong to a local union? A. I belong to Local 279, Jefferson City.

Q. How long have you been a member of Local 279? A. Since 1961.

Q. And how long have you been pipefitting? A. Well, since 1966; spring of 1966.

Q. Were you plumbing? A. Well, ours is a combination local.

Q. 279 has both plumbers and pipefitters; is that right? A. Yes, sir.

Q. And you were a plumber prior to 1966? A. A plumber; yes.

Q. Now, since you have been a pipefitter and you have been a member of Local 279, have you had occasion to work on some job that Local 562 had jurisdiction of? A. Yes, sir, I have.

[1,702] Q. And are you familiar with the Voluntary Fund? A. Yes, sir.

Q. And did you sign a Voluntary Contribution card? A. Yes, I did.

Q. And do you contribute to the Fund? A. I contribute to the Voluntary Fund; yes.

Q. Did anybody ever tell you you had to contribute? A. No, sir.

Q. Are your contributions to this Fund voluntary? A. Yes, sir.

Q. Now, did you ever work on any jobs under 562 jurisdiction that you did not make any contributions? A. Yes, sir.

Q. And what job was that? A. That was the Chesebrough-Ponds job.

Q. Where did that take place? A. In Jefferson City.

Q. And how many men were working on that job? Pipefitters? Do you recall? A. No, I don't. I mean I don't know how many; no.

Q. Could you give us—more than five? A. Yes, sir. There was, I would say there was in the neighborhood of twenty-five at the most, as fitters.

Q. Were those 279 men, or 562? [1,703] A. A majority of them were 279 men.

Q. How about the foreman and general foreman? A. 562; yes, sir.

Q. And you made no contribution at that time? A. No contributions.

Q. Did you work on that job, throughout that job? A. Yes, sir.

Q. Anybody tell you if you didn't contribute, you couldn't work on this job? A. No, sir.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you have worked on other jobs in addition to the Chesebrough-Pond job? A. Yes, sir.

Q. That was under 562's jurisdiction? A. Yes, sir.

Q. What are those other jobs? A. I worked the Bixby, Missouri, job, on the lead plant.

Q. Bixby, Missouri? A. Yes, sir.

Q. All right. What else? A. At Rolla, Missouri.

[1,704] Q. And at Rolla? A. Yes, sir.

Q. What else? A. I am presently working at Ft. Leonard Wood.

Q. Ft. Leonard Wood. Any other jobs besides those three and the Chesebrough-Pond? A. No, sir.

Q. Which one of these jobs did you work on first? A. Chesebrough-Ponds.

Q. That is the first job you ever worked on? A. Yes, sir.

Q. Under 562? A. Yes, sir.

Q. Sir, you live in Dixon? A. I live in Dixon, Missouri.

Q. Now, at the time that you began working on this Chesebrough-Ponds job, there was quite a controversy about which local would have jurisdiction of this job. Do you recall? A. Yes, sir.

Q. And the controversy was between your local and the St. Louis Local 562? A. Well, there was no controversy on it. It was awarded through the U. A. to 562.

[1,705] Q. Yes, sir. A. I mean it wasn't awarded to our local.

Q. It wasn't awarded your local? A. No, sir.

Q. Well, where did the controversy arise? A. What do you mean?

Q. You said there was some controversy? A. Well, there was no controversy on it. I didn't think so.

Q. You didn't think so? A. No.

Q. You didn't attend any meetings over in your local where the question was—— A. Yes, I did.

Q. ——where the question was discussed, namely, whether that ought to be a Jefferson City Local job or St.

Louis Local job? A. Yes, sir, but it was awarded through the U. A. to 562.

Q. And your business agent contended that it ought to be his job. Isn't that what he told your membership?

Mr. London: I will object to what may have been said, Your Honor. That would certainly be hearsay.

The Court: Well, it is hearsay.

[1,706] Mr. Riddle: It will be tied in Your Honor.

The Court: All right.

The Witness: Would you repeat that, sir?

Q. (By Mr. Riddle) Yes. Didn't your business agent take the position at your meeting that that job, Chesebrough-Pond, should be within the jurisdiction of the Jefferson City local? A. Well, our business agent, before the one that is present business agent, said that, but our present agent didn't say that.

Q. Well, was there a change in business agents along about that time? A. Yes, sir.

Q. The old business agent claimed that that should be a Jefferson City jurisdiction? A. Yes.

Q. And he left? A. Yes, sir.

Q. And a new man came on? A. Yes, sir.

Q. So the new man came on. He didn't object to it? A. Well, I had never heard him say anything; no, sir.

Q. All right, sir. Now, when you talk about controversy, that was the controversy that you referred to also, isn't it? A. I wouldn't say it was a controversy. I knew there [1,707] was some objection from our local.

Q. Yes, sir. And what was the objection, if you know? A. Like you say, the business agent thought it should be his job, and it was awarded through the U. A. to 562.

Q. Wasn't it discussed at that time if it was under the jurisdiction of 562, that you boys in Jefferson City would have to pay $2.00 a day?

Mr. London: I will object to this again, Your Honor. It is hearsay. We don't even know who we are talking about now. I don't know how we can tie in hearsay.

The Court: What is your objection?

Mr. London: I object. It calls for hearsay.

The Court: What are you objecting to?

Mr. London: The question. He just asked the question if he didn't, in fact, hear something, which would obviously call for hearsay.

The Court: All right. Were you requested to pay $20.00 a day on that job?

The Witness: No, sir.

The Court: OK.

Q. (By Mr. Riddle) So you didn't pay $2.00 a day on it? A. We were never requested to pay anything.

Q. All right, sir. Were you told in advance that you wouldn't have to pay $2.00 on that job? [1,708] A. There was a meeting between our executive board, our business agents and officers of 562, and 562 told our officers, our business agent, that we wouldn't have to pay it.

Q. Yes, sir. It was specifically exempted and waived by an agreement, so far as you understood? A. To state good relationships between the two locals.

Q. Yes, sir. And that is why you didn't pay it at that time, isn't it? A. Yes, sir.

Q. And that is why you didn't voluntarily pay it at that time, isn't it? A. There was nobody asked us to pay it.

Q. And you didn't voluntarily have to pay it? A. No, sir. Or at any time.

Q. Yes, sir. Now, what about on the Bixby job? A. I volunteered to pay it there.

Q. And you signed the card the first day you showed up for work? A. Yes, sir. I got ahold of the steward and asked him if I could contribute to that Fund.

Q. And did you—is that the very first day you went on the job? A. Yes, sir.

Q. And that is because you knew it would cost you [1,709] $2.00 a day to work on the jobs; is that correct? A. No, sir. I volunteered it.

Q. But you didn't volunteer on the Chesebrough-Pond job? A. Well, we weren't requested to even volunteer.

Q. Why did you volunteer on the Bixby job, and you didn't on the Chesebrough-Pond job? A. They didn't want us to.

Q. That's right. Your people didn't want you to? A. No, sir, it is not that. We didn't have to pay it on the Ponds job.

Q. You didn't have to pay it? A. No, sir. They wouldn't let us volunteer.

Q. They wouldn't let you volunteer? A. No, sir.

Q. I see. But they would let you pay it on the Bixby job? A. I don't know. I volunteered it.

Q. And they would let you pay it on the Rolla job? A. I volunteered it there.

Q. And they let you pay it on the Ft. Leonard Wood job? A. I volunteered it there.

Q. Each and every Monday morning you volunteered it? A. Yes, sir. And on the Rolla job we paid it on Friday evening.

[1,710] Q. But you never failed to pay it, did you? A. No, sir, I didn't.

Q. Yes, sir. Now, sir, why did you volunteer to pay it on one job, and you didn't on the other job in Jefferson

City? Tell this Court and jury that. A. They wouldn't accept it on the Jefferson City job.

Q. Did they tell you why they wouldn't accept it? A. To state good relationships between the two locals.

Q. Were you just jumping up and down to pay it on that Chesebrough-Pond job?

Mr. Daly: I will object to that question, Your Honor.

Mr. Riddle: I will strike that. Were you anxious to pay it on the Chesebrough-Pond job?

A. I would have liked to pay it.

Q. You are telling this Court and jury that you couldn't have come down to the Union hall down here in St. Louis, and couldn't have paid your $2.00 a day? A. I didn't come down here.

Q. You didn't try that? A. No, sir. When they didn't accept it, wouldn't accept it, I didn't inquire about it any more.

Q. Yes, sir. Sir, did you pay it when you began to work at Bixby, because you thought that this was necessary in order to work on the job? [1,711] A. No, sir. I volunteered it.

Q. You never got that idea from any place? A. No, sir. No, sir. The other men were paying it, and I inquired about it, and I decided to pay it.

Q. Ten dollars a week? A. Yes, sir.

Q. Forty dollars a month? A. Yes, sir.

Q. Do you have a family? A. Yes, sir.

Q. Children? A. Yes, sir.

Q. How many? A. I have three living and one dead.

Q. Yes, sir. Do you have a home? A. Yes, sir.

Q. Car? A. Yes, sir.

Q. Are you making payments on your car? A. Yes, sir.

Q. Making payments on your home? A. No. I rent.

Q. You rent? A. Um hmm.

[1,712] Q. Are you making payments on your refrigerator and that sort of thing? A. No, sir. No, sir.

Q. You are telling this Court and jury you'd rather take this $40.00 that you are paying a month and pay it to this Voluntary Fund than to apply it on the indebtedness on your automobile? A. Yes, sir.

Q. Sir, do you have any obligations to banks or finance companies? A. No, sir.

Q. You don't owe any of them anything? A. Just on my car.

Q. Just on your car? A. Yes, sir.

Q. What are your monthly payments on it? A. I don't know. My wife takes care of that.

Q. Sir, one other thing. You mentioned there was an agreement for good public relations between your local in Jefferson City and the local here in St. Louis. Was that an agreement between Mr. Callanan and your business manager over there, so far as you know? A. I think it is between officers of our local and officers of 562.

[1,713] Q. Yes, sir. Sir, do you know why the officers of 562 would be in a position to waive or refuse to accept your voluntary contributions in Jefferson City? Do you know that?

Mr. Daly: Your Honor, I will object to that. It calls for speculation.

Mr. Riddle: He can say if he knows.

The Court: He may answer if he don't.

The Witness: Would you say it again?

Q. (By Mr. Riddle) Do you know why the officers of Local 562 would be in position to waive or exempt the

payment, or to refuse to accept Voluntary—— A. No, sir, I don't.

Q. You don't know that? A. No, sir. Other than it would be good faith.

Q. Sir? A. Other than it would be in good faith to cause good relationship.

Mr. Riddle: Yes, sir. I have nothing further of this witness.

The Court: Any redirect?

Redirect Examination.

By Mr. Daly:

Q. Mr. Schaefer, you are still a member of Local 279, are you not? A. Yes, sir.

[1,714] Q. What is your salary, or your rate of pay? A. Right now, I don't know, sir. I couldn't tell you that. I'd have to check in with my business agent and find out.

Q. Is the rate of pay that you work under when you work on a 562 job higher? A. Yes, sir.

Q. About how much higher would it be? A. I would say it would amount to around seventy to eighty dollars per week more.

Q. You also, when you work on a 562 job, you are entitled to two dollars and seventeen and a half cents per hour into the pension, into the Welfare? A. Yes, sir.

Q. Have you ever collected from the Welfare? A. Yes, I have.

Q. Now, how long did you personally work on the Chesebrough job? A. I worked from June of 1966 till May 15, of 1967.

Q. Almost a year; is that correct? A. Yes, sir.

Mr. Daly: I have no further questions.

The Court: Any recross?

Mr. Riddle: I don't believe so, Your Honor.

The Court: Do you have something, Mr. Randall?

[1,715] Mr. Randall: No, Your Honor.

The Court: You may go out that door.

The Witness: Thank you, sir.

(Witness excused.)

BENJAMIN F. MILLER,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Miller, would you state your full name, please, sir? A. Benjamin F. Miller.

Q. Where do you live? A. I live at Festus, Missouri.

Q. Are you a member of Pipefitters Local 562? A. Yes, sir.

Q. How long have you been a member, sir? A. Ever since '46.

Q. 1946? A. (Indicating yes.)

Q. Do you recall, sir, when the Voluntary Political Fund was first started? A. Not the exact date. No, I couldn't give you that.

[1,716] Q. Do you have any recollection how long ago, sir? A. Been quite some time.

Q. Twenty years? A. Yes, around that.

Q. Now, sir, have you always contributed to the Voluntary Political Fund? A. Yes, sir, I sure have.

Q. Did you sign the Voluntary Contribution cards? A. Yes, sir.

Q. And do you remember when you signed those, when they were started? A. Not the exact date on them, no. It's been quite a while.

Q. And, sir, have your contributions been voluntary? A. Yes, sir.

Q. Did anyone ever tell you you had to contribute to it? A. No, sir.

Q. Or that it was necessary in order to work, or anything of that nature? A. No, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Sir, you testified that you had been paying into a [1,717] fund for a period of time before January 1 of '63? A. Well, it probably—before '63?

Q. Yes, before that time. A. I don't recall that. I couldn't say exactly on the date.

Q. Do you remember the time that you first saw a card and signed it? A. Not the exact date on it, no, but it's been some time.

Q. January 1 to 15 of '63 refresh your recollection? A. Along, probably, in there someplace.

Q. Who brought that card to you? A. Who brought it to me?

Q. Yes. A. Well, it was brought by the foreman; sent out by the hall.

Q. By the Union hall? A. Yes.

Q. Do you know who in the Union hall sent it out? A. No, I wouldn't say exactly.

Q. When you first saw those cards, did anyone explain to you what they were for? A. Yes, sir.

Q. Who did the explaining? [1,718] A. Well, we had a meeting on that that was for the Political Fund only.

Q. You mean right there at that time? A. Yes, sir.

Q. Where was that meeting held? A. Held in the Union hall.

Q. In the Union hall? A. Yes.

Q. On Pierce Avenue? A. Yes.

Q. Who conducted that meeting? A. Well, all of us were there at the time.

Q. You say, "all of us." You mean all 1200 of you? A. Well, the officers were the ones that conducted the meeting.

Q. Officers of what? A. Of the local.

Q. Officers of Local 562? A. 562.

Q. And who were the officers then? Name them by name. A. Well, there was Mr. Callanan.

Q. Yes? A. And Doc Lawler.

Q. Mr. Lawler, yes, and who? Mr. Seaton? [1,719] A. All the members were there.

Q. Mr. Steska? A. Yes, Mr. Steska was at the meeting.

Q. Mr. Burke? A. Mr. Burke? He might have been. I wouldn't say that. Sometimes he don't get there.

Q. All right. This was when you first had it explained to you? A. First had it——

Q. This is the first time the proposition was ever explained to you? A. Oh, no. We had that before. That is when it was brought up to increase it.

Q. Brought up for what purpose now? A. To increase it. The Fund.

Q. To increase the Fund? A. Um hmm.

Q. You mean to increase the amount of the payments? A. Yes.

Q. Was any explanation given to you as to why the increase was necessary? A. No. That was left strictly up to

the member. If he wanted to get in on it, why that was all right. If he didn't, he didn't have to.

[1,720] Q. Well, what was the purpose for the meeting then? A. Well, to see if we wanted to carry on through with it.

Q. Well, were you making a change then to—— A. Well, not more than we had before; only just a little more in the Fund.

Q. You were just putting a little more into the Fund? A. Um hmm.

Q. Well, did Mr. Callanan talk to you fellows who were there that night? A. Well, he talked to all of us about if we wanted to.

Q. All right. Did he tell you why an increase was necessary? A. Well, not exactly that, no, that to carry on the business, that he thought it would be a good idea if we did.

Q. All right. Did he tell you how much you ought to vote for? A. No, sir. That was strictly up to you what you wanted to put in.

Q. Well did you decide at that meeting that night what you wanted to put in? A. No, we didn't decide on any certain amount, or anything about it; just if we wanted to put in, we could.

Q. Well, now, you say the purpose was to increase it? A. Well, we talked that we should——

[1,721] Q. Increase it from what to what? A. Well, from the first we had of it.

Q. Increase it from what figure to what figure? A. Well, I don't know the exact figure on it. There was no exact figure. It was just what you wanted to put in. It might have run to a dollar and a half, maybe.

Q. Were you told that you ought to, within your own mind, decide to increase your contribution? A. No. I had that in mind when we talked about it.

Q. Well, when you were at this meeting, did you decide just what you wanted to contribute yourself? A. No. No certain amount; no.

Q. What amount did you start contributing after that? A. Whatever I felt like putting in.

Q. What did you feel like putting in the next week after that meeting? A. Oh, we put in a dollar.

Q. A dollar a day, five dollars a week? A. Five dollars a week.

Q. And what had you been putting in before that? A. I think, if I remember right, I think around fifty cents.

Q. So, from that day on, you put in a dollar a week? A. Well, not all the time. If we didn't want to put [1,722] that much in, we didn't do it.

Q. Sir, was there ever a week when you put in less than a dollar a day for eight hours' work?

The Court: He said a dollar a week.

Q. (By Mr. Riddle) Did you mean a dollar a week, or a dollar a day? A. A dollar a week? No, I don't recall that.

Q. Sir, maybe I didn't get your testimony clear. Did you say at this meeting in '63 you decided from there on that you'd put in a dollar a week, or a dollar a day? A. In '63, I told you I couldn't remember in '63 what we done at that time.

Q. Well, at any time, did you ever put in five dollars a week? A. No.

Q. You never did put in five dollars a week? A. Not any more than—I don't recall that. No, not five dollars a week.

Q. What job are you working on now? A. I am working on the cement plant out in Festus.

Q. What are you putting in now? A. A dollar.

Q. A dollar for what? A. Voluntary.

[1,723] Q. You put in just a dollar? A. Yes.

Q. Irrespective of how much you work? A. Sir?

Q. Irrespective of how many hours you work, you just put in a dollar? A. Yes. It don't make any difference.

Q. If you work five days, you put in a dollar? A. That's right. If you want to put more, you can put more.

Q. Have you ever put more than that? A. Oh, yes; a few times.

Q. At one time? A. Um hmm.

Q. Was that to catch up from the back payments, or just because you wanted? A. No, there was no payments to it.

Q. No payments at all? A. No.

Mr. Riddle: I have nothing further to ask this witness.

Mr. Randall: No redirect.

The Court: All right. You may go out that door. Call your next witness.

(Witness excused.)

[1,724] **JOHN KIELY,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. John Kiely.

Q. Where do you live? A. 2255 Oxford, in Florissant.

Q. Mr. Kiely, are you a member of Pipefitters Local 562? A. Yes, I am.

Q. And do you contribute to the Voluntary Fund? A. Yes, I do.

Q. Have you signed a Voluntary Fund card? A. Yes, I have.

Q. Are your contributions to the Fund voluntary? A. Yes, they are.

Q. Anybody ever tell you you had to contribute in order to work? A. No.

Q. Do you attend any of the Voluntary Fund meetings? A. Yes, I do.

Mr. London: You may inquire.

[1,725] **Cross-Examination.**

By Mr. Riddle:

Q. You have been a member of 562 how long? A. About seven and a half years.

Q. You have been working as a journeyman all that time? A. No. Three years as an apprentice.

Q. When did you get to be a journeyman member of the local? A. About 1963.

Q. What month in '63? A. Well, I believe it was February. I'm not quite sure.

Q. February? A. I think so.

Q. Were you working in January? A. Yes, I was.

Q. Now, when you say you signed a card—— A. Yes, I did.

Q. ——how soon after you became a journeyman did you sign the card? A. My first day on the job as a journeyman.

Q. You signed a card right there? A. Yes, I did.

Q. Who brought it around to you? A. Well, I believe it was the steward on the job. I'm [1,726] not quite sure.

Q. You say for a month or so in 1963 you were working as an apprentice? A. Right.

Q. And you weren't asked to sign a card as an apprentice? A. No, I wasn't.

Q. Were you making the same money as an apprentice as you are making as a journeyman? A. No.

Q. You were making less money? A. Less money; right.

Q. Were you given a chance to make any contributions into this Fund as an apprentice? A. No, I wasn't.

Q. Did you try? A. No, I never.

Q. Did you want to? A. Well, I would have if I had the money, but I didn't have the money.

Q. I see. Well, this first day that you were on the job as a journeyman, did you agree to pay a certain amount then? A. Yes, I did. I don't recall the exact amount. I think it was 50 cents a day.

[1,727] Q. Fifty cents a day? A. I believe that; yes.

Q. Is that when your dues and assessments began also? A. No. I paid my dues and assessments as an apprentice.

Q. Oh, you did. Do you know why you weren't allowed to pay while you were an apprentice into this Fund, although you were paying dues and assessments? A. Well, I would imagine because I didn't make half as much money as a journeyman.

Q. Well, your assessments were based upon a percentage of what you earned as an apprentice, I take it? A. Well, at that time I don't know what the percentage quite was, but I believe they were.

Q. Well, as a for instance, wouldn't they let you even put in twenty-five cents a week? A. Well, there was nothing, nothing involved.

Q. They wouldn't let you put in any small amount? A. No.

Q. But you say that your willingness to pay into this Fund had its beginning the day that you began to work as a journeyman with the increase in pay? A. No, I

wouldn't say that. I was willing to pay when I first started that local.

[1,728] Q. You mean even as an apprentice? A. Right.

Q. I'm not sure I understand you. Did you try to pay a small amount? A. No, but I was willing to. I would have if——

Q. If they had asked you to? A. If they would have taken it.

Q. Well, do you know they wouldn't take it? A. Well, I am sure they wouldn't have. I am sure, as an apprentice, I am sure they wouldn't have.

Q. In fact, you knew that apprentices weren't expected to pay? A. Right.

Q. But as a journeyman you were expected to pay it; isn't that the fact of the matter? A. No, sir.

Q. Who told you you weren't expected to pay it as an apprentice? A. Well, I believe when we first came in, when they talked to us they said they would not ask us to pay, they would not take any money from us.

Q. Which did they say, they wouldn't ask you or they wouldn't take money from you? Tell this jury what they told you. [1,729] A. I believe it was they wouldn't take money from us.

Q. You believe. Are you sure of that? A. Well, that is as far as I can remember.

Q. Yes. They told you then that they would take the money from you when you became a journeyman? A. No, they didn't say that.

Q. They said you'd get an opportunity to contribute? A. They didn't say that either.

Q. What did they say? A. Nothing along those lines that I can remember.

Q. How did you know that you wanted to start paying as soon as you became a journeyman? A. Well, I just knew that everybody else did.

Q. You thought it was a part of the price of working, didn't you? A. No, I never.

Q. What are you paying now a day? A. Fifty cents a day.

Q. When it was a dollar a day, did you pay at that rate? A. Yes, I did. I believe so.

Q. Were you pleased when it was reduced from a dollar a day to fifty cents? A. Well, it didn't bother me one way or the other.

Q. You'd just as soon pay a dollar as fifty cents? [1,730] A. No. I was happy to have the extra fifty cents, if that is what you mean.

Q. Well, if you were happy to have the extra fifty cents, why did you not stop paying the one dollar per day earlier? A. Well, because I kind of believe the money was needed for political reasons.

Mr. Riddle: That's all.

The Court: Any redirect?

Mr. London: No.

The Court: You may go out that door.

(Witness excused.)

RICHARD SULLIVAN,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Daly:

Q. State your name, please. A. Richard Sullivan.

Q. And where do you live, Mr. Sullivan? A. 815 Florland Drive, Florissant.

Q. And are you buying that place out there? A. I am.

Q. With whom do you reside? [1,731] A. Pardon?

Q. With whom do you live? A. My wife and four kids.

Q. What is your business or occupation, Mr. Sullivan? A. I am a pipefitter.

Q. And do you belong to a union? A. I do.

Q. What local do you belong to? A. 562.

Q. How long have you been a member of Local 562? A. Seventeen years.

Q. That would go back to maybe '51? A. 1951.

Q. I see. Now, are you familiar with the Voluntary Fund? A. I am.

Q. And did you sign a Voluntary Contribution card? A. I did.

Q. And do you contribute to the Fund yourself? A. I do.

Q. And are these contributions voluntary on your part? A. They are.

Q. Have you ever collected for the Fund? A. I have.

Q. And did you ever tell anybody they had to pay into [1,732] the Fund? A. No, sir.

Q. Did anybody ever tell you that you had to pay into the Fund? A. No, sir.

Mr. Daly: Your witness.

Cross-Examination.

By Mr. Riddle:

Q. Sir, are you a steward? A. No, I am not.

Q. Have you ever been? A. I have.

Q. At the time you were collecting the money, were you? A. No, sir.

Q. At the time you were collecting money, were you a foreman? A. I was a foreman; yes, sir.

Q. As a foreman, you have the authority to assign a man to this jor or that job? A. I did.

Q. Some jobs are harder than others? A. True.

Q. Some are relatively easy? A. Not too easy, but they are.

[1,733] Q. I take it you haven't missed a payment? A. No, sir, I have not.

Q. Never been behind? A. No, sir.

Q. Do you know what kind of payments I am talking about? A. Yes, sir.

Q. I am talking about assessments to the Union. A. Right.

Q. You haven't missed one of them at all? A. The assessment, no, sir.

Q. What about the other assessments? A. Well, we only have one assessment for the Union.

Q. Have you missed any type of payment into your Union? A. No, sir, I have not.

Q. What does it cost you a day to work on a Union job, you figure? A. I believe my assessments are three and three-quarters per cent.

Q. In dollars and cents, what does that amount to? A. Approximately a dollar seventy-five a day.

Q. What else does it cost you? A. In what respect, sir?

Q. Well, how much money does it cost you to work on this job, in addition to the dollar seventy-five a day? [1,734] A. It doesn't cost me actually to work on the job; just my assessments.

Q. What about the fifty cents a day that you are paying? A. I give that freely, sir.

Q. Well, you give your assessment freely, don't you? A. Yes, sir, but that is mandatory.

Q. Sir, do you remember when the rate went from a dollar down to fifty cents a day? A. Do I remember?

Q. Yes. A. Yes, sir.

Q. Did you participate in that decision to reduce those rates from a dollar to fifty cents? A. I believe I was there; yes, sir.

Q. Did you vote in favor of the decrease? A. Yes, sir.

Q. Did you vote for that increase? A. Yes, sir.

Q. Why did you vote for a decrease then? A. Sir?

Q. Why did you vote for decrease from one dollar fifty [1,735] cents? A. Yes.

Q. Yes? A. Well, the rank and file went along with it, so we voted on it.

Q. You say the rank and file. Do you consider yourself the rank and file? A. I'm a member; yes, sir.

Q. Have you ever paid more than what the rank and file, or what the rate was, into this Fund? A. No, sir.

Q. Ever paid any less? A. No, sir.

Q. You are current on everything that is owing, including your assessments, Voluntary Fund payments, and your dues? A. Yes, sir.

Q. Now, sir, you say that you participated in some of these discussions. What was your purpose for paying into this Fund? A. My purpose?

Q. Yes. A. The Political Fund, you are talking about?

Q. Yes. A. To help elect legislators that is for labor.

[1,736] Q. Yes, sir. Sir, were you present when that Fund was cut off and the Callanan Gift Fund was instituted?

Mr. Daly: I object to that question, Your Honor, ask it be stricken and the jury instructed to disregard it and a mistrial be declared. It doesn't tend to prove or disprove any of the issues in this case.

The Court: The request for a mistrial will be denied, and the objection will be overruled.

Mr. Daly: May the objection go to all questions on this line, Your Honor?

The Court: Yes.

Q. (By Mr. Riddle) Sir, did you participate in that decision—— A. I was at the meeting; yes, sir.

Q. ——to cut off the Political Fund and put into life the Callanan Fund? A. I was.

Q. Sir, did you decide at that time that you didn't need any more money in the Callanan Fund for a while? A. I would say so; yes, I decided that, yes.

Q. In your own mind, you decided it? A. Yes, sir.

Q. Did you know how much money was in the Fund then? A. Not approximately; no, sir, I wouldn't.

[1,737] Q. Did you have any idea? A. Truthfully, no, sir, I didn't.

Q. You don't know whether it had a nickel or five hundred thousand dollars? A. Well, I knew we had money in there; yes, sir.

Q. But you didn't know how much? A. No, sir, not total.

Q. You don't have the slightest idea? A. Well, I could take a guess, sir.

Q. What would be your guess? A. Maybe a hundred some odd thousand. I don't know. It is just a guess, actually.

Q. Well, did anybody tell you how much was in the Fund then? A. I don't recall, sir.

Q. Did you collect the Callanan money? A. No, sir, I did not.

Q. But you paid regularly into it? A. Yes, sir.

Q. Was that for political purposes? A. Sir?

Q. Was that for political purposes that you paid into that Fund? You can answer that yes or no. A. Would you repeat that?

[1,738] Q. Yes. The money that you paid into the Callanan Gift Fund, was that for political purposes? You can answer it yes or no. A. No, sir.

Mr. Riddle: I have nothing further.

Mr. Daly: No redirect.

The Court: You may go out that door.

The Witness: Thank you.

(Witness excused.)

JOHN A. KELLY,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Kelly, would you state your full name, please, sir? A. My name is John A. Kelly.

Q. And where do you live, Mr. Kelly? A. In Wentzville, Missouri.

Q. Are you a pipefitter? A. Yes, sir.

Q. Are you a member of Local 562? A. Yes, sir.

Q. And how long have you been a member? A. Twenty-one years.

[1,739] Q. Are you familiar with the Voluntary Political Fund? A. Yes, sir.

The Court: Mr. Kelly, would you sit back in the chair so your nose is a little farther away from the mierophone? That is what causes that roar, when you breathe.

Q. (By Mr. Randall) Have you always contributed to the Voluntary Fund? A. Yes, sir.

Q. Are you contributing to it now? A. Yes, sir.

Q. And where do you work at the present time? A. At Labadie Powerhouse, in Labadie, Missouri.

Q. Now, have your contributions to that Fund been voluntary? A. Definitely.

Q. Has anyone ever told you you had to contribute in order to work? A. No, sir.

Q. Or to remain a member of the Local? A. No, sir.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Are you a foreman? [1,740] A. Yes, sir.

Q. How long have you been a foreman? A. On this job? About eight weeks.

Q. Before this, were you a foreman? A. At various intervals, yes, sir.

Q. Who recommended you to be a foreman on this job? A. You gain your foremanship through the integrity of your work and constantly—I think I'm a pretty good pipefitter, and I earned the job of foreman.

Q. Sir, did the Union hall recommend you for a foreman? A. No, sir, not to my knowledge.

Q. You don't think they did? A. (Indicating no.)

Q. Sir, are you collecting money now? A. Yes.

Q. From the members? A. From the men I am associated with in my crew of men; yes, sir.

Q. Any on your crew from out of town? A. No, sir.

Q. All of them local members? A. Yes, sir.

Q. All of them paying you 50 cents a day? A. All of them have given me 50 cents a day; yes, sir.

[1,741] Q. Now, have you been a foreman on some jobs in the past? A. Yes, sir.

Q. Where out-of-towners worked? A. Yes, sir.

Q. What about in 1966? A. Yes, sir.

Q. What about in the months of June, July and August of '66, were you a foreman then? A. To my knowledge, no, sir.

Q. What job are you working on now? A. What job was I working on?

Q. Yes. A. I was working at that time—let's see. July of '66. I have to think back.

Q. Well, I will refresh your recollection. That is when the Callanan Gift Fund was going on. Do you remember that?

Mr. Daly: We object to this, Your Honor, for the same reasons stated with the previous witness. We object to the entire line of questioning.

The Court: All right. It will be overruled.

Q. (By Mr. Riddle) Do you remember the period of the Callanan Gift Fund? A. Yes, sir.

Q. Where were you working then? [1,742] A. Well, I was either working at Palmyra, Missouri, or else I was working at the hotel on Spring and Lindell. Those were two different contractors. One I was a foreman, and one I wasn't.

Q. Well, on the job up at the one that was upstate, did you say at Palmyra? A. Palmyra, yes.

Q. Were there some other out-of-towners working on that job? A. Yes, sir.

Q. Did they pay into the Callanan Fund? A. To the best of my knowledge, they did.

Q. Did they pay four times as much as you did into the Callanan Fund per day, 8-hour day? A. I couldn't tell you that, sir.

Q. Do you know what their rate of pay was? Two dollars a day? A. Their rate of pay was two dollars for every day that they worked; yes.

Q. And your rate of pay at that time was fifty cents a day, wasn't it? A. I suppose so. Yes. I don't know if it was a dollar or fifty cents a day at that time.

Q. Do you think that those out-of-towners felt four [1,743] times as kindly and generous toward Mr. Callanan as you do?

Mr. London: I object to the form of the question, Your Honor.

The Court: I think it is argumentative, Mr. Riddle.

Q. (By Mr. Riddle) Sir, let me ask you this question; Did you ever hear any of the out-of-towners, or did any of them ever tell you why they were contributing $2.00 a day rather than 50 cents a day, as you were, to Mr. Callanan?

Mr. Daly: Your Honor, I object. This would be hearsay, what anyone might have told him.

Mr. Riddle: This is cross-examination, Your Honor.

The Court: Well, it is cross-examination. That doesn't change the hearsay rule, but I think that he can testify to the fact whether or not there was any discontent or displeasure.

The Witness: To my knowledge, all men that I was associated with, of whom I collected any money from towards the Fund, towards this Gift Fund, did so on their own recourse. They did it because they wanted to, fairly and squarely.

Q. None of them refused to pay it? A. No, sir.

Q. You collected every week from every one of them? A. For every working day that they worked.

Mr. Riddle: That's all.

[1,744] The Court: Call your next witness.

(Witness excused.)

CHARLES W. CAMPBELL,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. London:

Q. State your name, sir. A. Charles W. Campbell.

Q. Where do you live, Mr. Campbell? A. Route 3, Jackson, Missouri.

Q. Mr. Campbell, are you a member of Pipefitters Local 562? A. I am.

Q. Do you contribute to the Voluntary Fund, sir? A. I do.

Q. Are your contributions to that Fund voluntary? A. They are.

Q. Did anybody ever tell you you had to give in order to work? A. No.

Mr. London: You can inquire.

[1,745] **Cross-Examination.**

By Mr. Riddle:

Q. I didn't get you. Are you a member of 562? A. I am.

Q. Are you a foreman? A. No, sir.

Q. Ever been a foreman? A. Yes.

Q. When? A. 1967, part of 1968.

Q. Within the last year, you have been a foreman? A. Yes.

Q. What job were you a foreman on? A. Bixby, Missouri job.

Q. Did you collect monies? A. I did.

Q. From the out-of-towners, as well as the regular members? A. Yes.

Q. You collected at the rate, I guess, of $2.00 a day——

Mr. London: I will object as being out of the scope of the direct examination.

Mr. Riddle: ——from the out-of-towners?

The Court: No, I think it is not. He may answer.

[1,746] The Witness: Would you repeat the question?

Q. (By Mr. Riddle) Did you collect from the out-of-towners at the rate of $2.00 a day? A. I did.

Q. Any of them refuse to pay you? A. No, sir.

Q. Did you distribute cards to the new ones that came on the job? A. No, sir.

Q. These Voluntary cards? A. No, sir.

Q. Who did that for you? A. I assume the steward did.

Q. The steward distributed the cards when the new men came on? A. I am sure he did.

Q. Well, you have seen him do it, I guess? A. Not to my knowledge, I didn't.

Q. But you know they got the cards? A. Not for sure; no.

Q. Have you ever been a steward? A. No.

Q. You have been a member of 562 how long? A. About two years.

[1,747] Q. Were you a member of another pipefitters local before that? A. I was.

Q. Which one? A. Local 318, Cape Girardeau, Missouri.

Q. Cape Girardeau? A. Yes.

Q. You changed your membership when? A. 1966.

Q. Do you remember what month? A. I don't remember.

Q. Sir, when you were a member of 318 in the early part of 1966, what did you voluntarily pay into this Fund per day? A. I don't remember for sure, because it was—I voluntarily pay different amounts.

Q. You mean you paid some amount different than $2.00 a day when you were working out of the Cape local? A. I did earlier than that, I am sure.

Q. Was this an exception? A. Not that I know of.

Q. You mean you are telling this Court and jury that there were times you worked on a St. Louis job when you were a member of the Cape local that you paid less than $2.00 a day for an 8-hour work day? [1,748] A. Yes.

Q. Can you tell us when, and what job you were on then? A. I don't remember the exact job or the exact dates, but I do remember I paid less than $2.00 a day.

Q. Occasionally? A. I just don't remember when that was.

Q. Well, the rate at that time was $2.00 a day for out-of-towners, wasn't it? A. I don't know.

Q. You don't know that? A. No, sir.

Q. Well, you know what it is now, don't you? A. For out-of-town members?

Q. Yes. A. I don't know.

Q. Well, sir, do you know this, that you began to pay a lesser amount into this Voluntary Fund the very day that you became a regular member of 562? Do you know that? A. Well, I voluntarily contributed, I assume, the same as the other members of 562.

Q. Yes. My question, sir, was do you know that you voluntarily paid a lesser amount the very day, or for that very pay period, first pay period, just as spon as you changed your membership from 318 over to 562, into the Voluntary Fund? [1,749] A. Yes.

Q. Why did you pay less right after you changed your membership? A. Well, the other members of the local were paying, volunteering a lesser amount.

Q. In other words, you were only expected to pay what the other members were paying? Isn't that a fair statement of it, sir? A. I wasn't expected to pay any certain amount, that I know of.

Q. Have you ever refused to pay anything? A. No, sir.

Mr. Riddle: I have nothing further to ask this witness.

Redirect Examination.

By Mr. Randall:

Q. Mr. Campbell, how long were you a member of 318? A. From 1951 until 1966.

Q. And, sir, did you work under the jurisdiction, from time to time, of Local 562 during all that period of time? A. No, sir, not all of that time.

Q. When did you first work under the jurisdiction of 562? A. 1951, '52.

Q. And do you recall how much you were paying to the [1,750] Voluntary Fund at that time? A. No, sir, I don't remember.

Q. Do you recall whether or not you paid assessments to Local 562 at that time? A. No, sir, I don't remember back that far.

Q. How long did it take you after you attempted to obtain membership in 562 before you finally were admitted to 562? A. Oh, I don't think it was any long, drawn-out period or anything like that.

Mr. Randall: I see. I think that's all.

The Court: Any recross?

Mr. Riddle: Just one second, Your Honor.

Recross-Examination.

By Mr. Riddle:

Q. Sir, you said long, drawn-out period. What do you mean by that? Was it a year, or six months? A. No, it wasn't anything like that.

Q. Three months? A. I'd say less than that.

Q. Less than three months? A. Yes.

Q. Sir, while you were working down at—while you were a member of the Cape local, did you go around over the [1,751] country and work at other locals? A. I have, at various times; yes.

Q. Can you give us a local that you worked for, other than the St. Louis, while you were a member down at Cape? A. Yes. I worked the Rockford, Illinois, local union.

Q. All right. Rockford, Illinois? A. I don't remember the local union number.

Q. Yes. Now, when you went to Rockford, Illinois, to work, did you take a travel card with you? A. I did.

Q. What did it cost you per month to work for the Rockford, Illinois, local? A. Oh, travel card dues were $8.00 a month.

Q. And you paid into the Rockford local? A. I did.

Q. Is that all you paid? A. That's all I paid to them; yes, sir.

Q. On St. Louis local jobs, you never used a travel card? A. No, sir.

Q. You paid them the $2.00 a day? A. I voluntarily paid $2.00 a day; yes.

Q. And didn't pay them any travel money? A. No, sir.

Q. Sir, which would you prefer to do, pay the $40.00 a [1,752] month, or eight dollars travel card fees?

Mr. London: I object to that as being irrelevant and immaterial, Your Honor, and calling for a conclusion on the part of the witness.

The Court: He may answer.

The Witness: I would prefer to pay the $40.00 a month.

Q. Rather than $8.00 a month? A. I certainly would; yes.

Q. You mean to tell this jury that you'd rather have $8.00 in your hand than $40.00?

Mr. Daly: Your Honor, I will object to that. That is not what the witness said.

The Court: Well, I think your question is argumentative. I will sustain it as to the form of that question.

Mr. Riddle: That's all.

The Court: Any redirect?

Mr. Randall: Yes, I have one question.

Redirect Examination.

By Mr. Randall:

Q. Were you ever offered the opportunity to pay the travel card dues by Local 562, sir? A. No, sir.

Mr. Randall: That's all.

Mr. Riddle: Nothing further, Your Honor.

[1,752A] The Court: All right. You may step down. Go out that door. Call your next witness.

(Witness excused.)

[1,753] **JAMES E. CRAFT,**

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Craft, would you state your full name, please, sir? A. James Edward Craft.

Q. And what is your address? Where do you live? A. Jackson, Missouri. Route 2.

Q. Are you a member of Pipefitters Local 562? A. I am.

Q. How long have you been a member? A. Roughly about three years.

Q. And were you, at one time, a member of Pipefitters Local 318? A. Yes.

Q. How long were you a member of that, sir? A. About three years.

Q. Now, are you familiar with the Pipefitters Local 562's Voluntary Political Fund? A. I think so.

Q. Have you contributed to it? A. I have.

Q. Were your contributions voluntary? [1,754] A. Yes.

Q. Did anyone ever tell you you had to contribute to it? A. No.

Q. Sir, were you ever offered the opportunity by Pipefitters Local 562 to pay a travel card dues? A. No, I didn't have no reason to.

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Do you mean at a time when you were a member of 318 and working on a 562 job, this is back when you were a member of the Cape Girardeau local? A. Yes.

Q. And working on a 562 job, you didn't have any reason to ask for a travel card? A. Why should I? I was working.

Q. Well, do you know what a travel card is? A. Well, I think so; yes.

Q. You have used them, haven't you? A. Once.

Q. When did you use it? A. Decatur, Illinois, I believe.

Q. All right. And when you left to go up to Decatur from your local down at Cape, you made an application from your [1,755] local office there for a travel card? A. Yes.

Q. And when you went up to Decatur, you deposited your travel card with your business agent up there? A. Right.

Q. And for that travel card you paid $8.00 a month? A. I don't know whether that is the correct amount or not, but I know it was some money. I don't know what the amount was.

Q. Well, does $8.00 sound about right? A. Well, probably.

Q. And for that $8.00 you were permitted to work on a Decatur local job? A. Right.

Q. All right, sir. During that same period of time when you worked on a 562 job, you say you didn't have a travel card? A. No.

Q. So you didn't pay them $8.00 a month for travel dues? A. No.

Q. Instead, how much did you pay a month into the Voluntary Fund? A. I don't know how much it was. I never did figure it up.

Q. You didn't figure it up at $10.00 a week? $2.00 a day? [1,756] A. Well, let's see. It run about, I guess about $2.00 a day.

Q. Or $10.00 a week? A. Yes.

Q. Or $40.00 a month? A. Yes; sounds about right.

Q. It's about right, isn't it? Except when you were paying or working overtime, then you paid more? A. I don't recall whether I paid any more or not for working overtime.

Q. Now, then you say that you didn't have need for a travel card into 562? A. No. Why should I?

Q. Sir, you paid $8.00 to work on the Decatur local job? A. I had to pay that.

Q. And you have just testified that you paid $40.00 a month to work on a 562 job? A. That was voluntary though.

Q. Yes, sir. Why didn't you take them a travel card for $8.00? A. I didn't feel like I wanted to.

Q. You mean you are telling the jury that you didn't want to get off with $8.00? That you preferred to pay them $40.00? [1,757] A. That's right.

Q. What do you work for? What is the purpose of you going out and working on a job? A. Earn myself a living.

Q. To earn money, isn't it? A. Right.

Q. Do you have a wife and family to support? A. I have.

Q. And you are telling us that you'd rather pay $40.00 to this local than $10.00 to another local on a travel card? A. Repeat that question.

Q. You are telling us that you'd rather pay the $40.00 a month than an eight-dollar travel card? A. $40.00 to what?

Q. Into the Voluntary Fund? A. Yeah. Any time.

Q. Just tell us why. A. Because I figure it helps me and the community around here.

Q. Where did you get that suggestion? Who told you—— A. Nobody.

Q. ——to say the community around here? A. Well, in the immediate area.

Q. You live down at Jackson? [1,758] A. I do. I just recently moved down there though.

Q. Where did you live before then? A. St. Ann.

Q. St. Ann? A. Yes.

Q. You pay $40.00, you say, a month to help the community around here? A. Um hmm?

Q. Do you pay any other money for community projects and affairs, besides into this Fund? A. A little charity.

Q. A little charity? A. Um hmm.

Q. How much a month do you pay in to charity? A. I don't know.

Q. $40.00? A. Probably not quite that much, maybe.

Q. Sir, you became a member of 562 three years ago? That is roughly? I don't know what time it was, exact date, but that's in the neighborhood of it; yes.

Q. The very week that you became a member of 562, do you recall that you paid voluntarily a lesser amount? A. No.

Q. You don't recall that? [1,759] A. No. There ain't no set amount you got to pay anyway.

Q. There's no set amount you got to pay? A. No.

Q. Have you ever paid less than the going rate? A. Yes.

Q. How much less? A. You pay $2.00, $3.00, whatever you feel like paying.

Q. You mean for an 8-hour day you have, on occasion, paid $3.00? A. Yes. No, not for an 8-hour day.

Q. Well, for an 8-hour day, have you ever paid more than $2.00? A. No.

Q. Even when you were working on a Cape Girardeau job? A. No.

Q. Have you ever paid less than $2.00 when you were working on a Cape Girardeau job? A. No.

Q. So you couldn't pay what you feel like paying; you pay what the going rate is, don't you? A. No.

Mr. Riddle: That is all.

[1,760] **Redirect Examination.**

By Mr. Randall:

Q. Mr. Craft, how long did you live in the St. Louis area before you were admitted into membership of Local 562? A. How long did I live in the St. Louis area?

Q. Yes.

The Court: The question was how long did you live here before you were admitted into membership of 562?

The Witness: I've lived in the St. Louis area since '57.

Q. (By Mr. Randall) And you were only admitted into membership two or three years ago? A. Yes.

Q. Now, do you recall whether or not, during that entire period of time, up until you were admitted, whether or not 562 admitted any new members into membership? A. As far as I know, they didn't.

Q. And that was the first occasion; is that correct, sir? A. As far as I know, it is.

Q. And, at that time, how many did they admit? A. Roughly, about twenty-nine in that group that I went in in.

Q. Sir, are you familiar with the provisions of the By-Laws and Constitution of the Local? Of the United Association? [1,761] A. Not too familiar with them; no.

Q. You are not familiar then with the travel card provision for dues? A. Not really; no.

Mr. Randall: That's all.

The Court: Any recross-examination?

Mr. Riddle: Just one question.

Recross-Examination.

By Mr. Riddle:

Q. Sir, were you a member of 562 during the period of the Callanan Gift Fund?

Mr. Daly: I object to that question, Your Honor, for the reasons previously stated, and object to any further questions along this line.

The Court: Well,——

Mr. Daly: It is beyond the scope of the direct, or redirect.

The Court: You anticipate my ruling. This is not within the scope of the redirect.

Mr. Riddle: That is all right.

The Court: All right. Is that all? That is all for you.

(Witness excused)

The Court: Call your next witness. Well, we will [1,762] recess, but we are going to start tomorrow morning at 8:30. Bear in mind the admonition I have given you heretofore. Don't discuss this with anyone, or permit anyone to discuss it with you. Don't read the newspapers. All right. 8:30 tomorrow morning.

(Thereupon at 5:30 P. M., on Monday, September 16, 1968, court adjourned until 8:30 A. M., Tuesday morning.)

Tuesday, September 17, 1968.
Morning Session.

The Court: Call your next witness.

Mr. London: May we approach the bench, Your Honor?

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

Mr. London: If the Court please, in view of the conversation that we had with the Court and counsel for the Government earlier this morning we, counsel for the defendants, have discussed the matter, discussed wherein the Court stated to us that in view of the fact that we had numerous additional witnesses to call of the same type that are members of the Union that have been called over the last two days, and that in view of the fact that these witnesses were numerous, that the Court, although permitting us to call these witnesses, would require that night sessions be held and that Saturday sessions [1,763] be held and that the Court would attempt to make arrangements for additional reporting service, we feel we would like to call these witnesses who would testify, as has some of the other witnesses who have preceded them, that there was no compulsion for them to contribute to this Fund, that they had attended meetings wherein the rates of contribution were discussed and voted upon by the members, who would testify that all of the contributions to this Fund were voluntary, and that they knew that this Fund meetings and Union meetings, as well as the Fund meeting itself, were separate and apart, although as I indicated we would like to have all of these witnesses, we feel in view of the statement by the Court that it would be physically impossible for us as attorneys to adequately represent these defendants under the circumstances as outlined, and that the defendants would

thereby under the conditions set forth be deprived of their right to effective assistance of counsel as guaranteed by the Constitution.

We further feel that this procedure would deprive the defendants of a fair trial and due process by placing an undue hardship on the jury and burden the jury with the hours of work as has been indicated. I believe yesterday we examined some thirty-plus witnesses. There are hundreds of more witnesses from this Union, and who have worked under the jurisdiction of this Union, who could be called, but under the circumstances as I have indicated that were explained to us, we think we at this [1,764] time will call no more of these witnesses.

The Court: I take it, Mr. London, that your witnesses are all ready to testify that they are employees or members of 562, and that they participated in the Voluntary Fund and that their contributions have been voluntary, is that right?

Mr. London: And an additional thing, Your Honor, some of them are members of 562, some are not.

The Court: All right, that they are and have worked under the jurisdiction of 562?

Mr. London: And also, as you indicated, their contributions were voluntary and also that the Fund is separate and apart from the Union itself and that they have attended these meetings where these matters were voted upon.

The Court: Well, of course, a great many of these witnesses did not testify about being separate and apart.

Mr. London: Not every witness, of course, Your Honor, will testify as to exactly the same facts.

The Court: The Court has no intention of limiting the number of witnesses, although the Court feels by reason

of the authority of Samuels v. United States, which is reported in 232 Fed. 536, that the Court has the authority to limit it under the circumstances where the witness's testimony is merely going to be cumulative.

The Court has indicated he has no intention of stopping you. I merely want to put on as many witnesses as [1,765] can be put on during the course of the day. These jurors are being kept from their businesses, and to the extent that we can, we are going to run as long as we can during the day.

Now, the Court is not asking you not to put on, and has told you before he had no intention of limiting the numbers of witnesses you put on. So whatever you do, you're doing on your own. The Court is not compelling you to do anything.

All right, call your next witness.

Mr. London: One moment.

Mr. Randall: Under the circumstances we are not going to call any more of that class of witness.

The Court: It's up to you to call them or not. We are here to hear them, and the jury is here, and the reporter is here, and it is 10:00 o'clock in the morning, and we are ready to go, and let you put on as many as you want.

Mr. London: Off the record for a moment.

(Thereupon, there was a colloquy between Court and counsel off the record.

Thereupon the following proceedings were had in the presence and hearing of the jury:)

Mr. Randall: Mr. Edward Steska.

The Court: He's already been sworn.

EDWARD W. STESKA,

recalled, having previously been duly sworn, testified in behalf of the defendants as follows:

[1,766] **Direct Examination.**

By Mr. Randall:

Q. Mr. Steska, are you the same Edward Steska who has previously testified twice in behalf of the Government? A. Yes, sir, I am.

Mr. Riddle: I object to that, Your Honor, when he says "on behalf of the Government." He was called as a Government witness but it was made clear for the record that he was the president of the company. We were entitled to consider him as an adverse witness.

The Court: All right.

Q. (By Mr. Randall) Are you the president of Local 562, sir? A. Yes, sir, I am.

Q. You are a member of Local 562? A. I am.

Q. Mr. Steska, how long have you been a member of Local 562? A. Since 1941.

Q. How long have you been president of Local 562? A. Since 1961.

Q. Are you one of the trustees of the Welfare Trust? A. Yes, sir, I am.

Q. Are you one of the trustees of the Pension Trust? [1,767] A. Yes, sir.

Q. And is that a joint management and labor trust, those two trusts? A. Yes, sir, it is.

Q. And how long, sir, have you been trustee of the Welfare Trust? A. Approximately three years.

Q. And how long have you been trustee of the Pension Trust? A. Same amount of years, about three years.

Q. Now, do you hold also an appointive office in Local 562? A. Yes, sir, I do.

Q. What is that, sir? A. I'm a business representative.

Q. Now, are you a member of the Voluntary Fund? A. Yes, sir, I am.

Q. And how long have you been a member of the Voluntary Fund, sir? A. Since its inception, around 1949.

Q. Now, sir, in your various capacities that you have defined are you familiar with the affairs and functions and activities of Local 562? A. Yes, sir.

[1,768] Q. And are you familiar with the affairs, functions and activities of the Welfare Trust? A. Yes, sir.

Q. And of the Pension Trust? A. Yes, sir.

Q. And of the Voluntary Fund? A. Yes, sir.

Q. Now, Mr. Steska, have you brought with you a copy of your contract, Local 562's contract? A. Yes, sir.

Q. Could I have the current one, sir? A. Yes, sir.

(Thereupon Defendant Union Local 562's Exhibit DD was marked by the reporter for the purpose of identification.)

Q. Now, Mr. Steska, I hand you what has been marked Local Union 562 Exhibit DD, sir, and I will ask you if that is a copy of your current contract? A. Yes, sir, it is.

Q. And what was the effective date of that contract? A. Effective June 15, 1968.

Q. Now, do you have your contract immediately prior to that one with you? A. Yes, sir.

Q. And the one prior to that too?

[1,769] We'll mark them both.

(Thereupon Defendant Union Local 562's Exhibit EE and FF were marked by the reporter for the purpose of identification.)

Q. I will now hand you, Mr. Steska, what has been marked Local Union 562 Exhibit EE, sir, and I will ask you if that is your contract immediately prior to the one now effective? A. Yes, sir, it is.

Q. What is the date, effective date of that contract? A. Effective June 15, 1966.

Q. I hand you Local Union 562 Exhibit FF and ask you what that is, sir? A. This is a copy of the contract that was in effect June 15, 1963.

Q. Mr. Steska, do you have with you a copy of the By-Laws and Constitution of Local 562? A. Yes, sir.

Q. Could I have that, please, sir?

The Court: Aren't there some in evidence already?

Mr. Randall: Your Honor, I'm not sure it's the one effective. They brought some in from the local union and I would just as soon mark one of them.

(Thereupon Defendant Union Local 562's Exhibit GG was marked by the reporter for the purpose of identification.)

[1,770] Q. Now, Mr. Steska, I hand you what has been marked Local Union 562 Exhibit GG and I will ask you if that is a copy of the By-Laws and Constitution of Local Pipefitters Union 562? A. Yes, sir, it is.

Q. What is the effective date of that? A. This was adopted by a vote of the membership in a meeting of November 9th, 1960.

Q. 1960. Now, who wrote that By-Laws and Constitution? A. Our attorney, Harry Craig.

Q. Now, do you have a copy, Mr. Steska, of the By-Laws and Constitution of the United Association? A. Yes, I have.

(Thereupon Defendant Union Local 562's Exhibit HH was marked by the reporter for the purpose of identification.)

Q. Now, Mr. Steska, I hand you Local Union 562 Exhibit HH and ask you if that is a copy of the By-Laws and Constitution of the United Association? A. Yes, sir, it is.

Q. What is the effective date of it? A. This was revised and amended at Kansas City, Missouri, August 8-12, 1966. That was at our convention.

Q. Now, sir, do your contracts contain a copy of your trust agreements? Are they set forth in your contract? [1,771] A. Yes, sir.

Q. Now, do you have a document that sets forth your jurisdiction, the jurisdiction of your local? Do you have such a document with you, a letter or something, from the United Association? A. Yes, sir, and it's also in the contract.

Q. It's in the contract? A. Yes, sir, and I also have a copy of the letter from General President Schuman.

Q. Could I have that?

I would like to get these marked before we start talking about them.

Could I have that map? A. I believe you've got the map, haven't you?

Q. Maybe I have.

(Thereupon Defendant Union Local 562's Exhibits II, JJ and KK were marked by the reporter for the purpose of identification.)

Q. Now, Mr. Steska, I hand you what has been marked Local 562 Exhibit II and I will ask you if that is the letter from the general president which explains and sets forth the jurisdiction of your local? A. Yes, sir, letter on the top is the recommendation from General Organizer Ryan to Mr. John McCartin, who is [1,772] Assistant General President, and the communication in the back is a letter addressed to the business manager of Local

562 confirming General Organizer Ryan's recommendation.

Q. All right, if you will just hold that, too, for a moment and, sir, I will hand you what has been marked Local Union 562's Exhibit JJ and will ask you, sir, what that is? A. This is a map of the State of Missouri and it indicates the various counties of which Local 562 exercises jurisdiction.

Q. That needs some explanation to fully indicate that, the map itself is not sufficient to indicate all that, is it, sir? A. No, sir.

Q. All right, and then I will show you Local Union's Exhibit KK and will ask you what this is in relation to that map? A. Well, in relation to the map here that is in the outline of the so-called boundary lines of Local 562 jurisdiction.

Q. But it does not contain the colors? A. No, sir, it does not.

Q. All right, now, sir, if I might—Your Honor, at this time I offer Exhibits DD through KK in evidence.

Mr. Riddle: Your Honor, I haven't seen that contract. If he will withhold that until we have a chance to look at it——

The Court: You mean the letter?

[1,773] Mr. Randall: Jurisdictional letter.

Mr. Riddle: Yes. We will have no objection to the rest of them. We do want to take a look at that before——

The Court: All right, I will receive the rest of those.

(Thereupon Defendant Union Local 562's Exhibits DD, EE, FF, GG, HH, JJ and KK were received in evidence.)

The Court: Mr. Steska, isn't the last part of that sheaf of papers the only significant portion in relation to the questions that were propounded to you?

The Witness: No, Your Honor. You would have to take the entire letter because it just goes right on through.

Mr. Randall: Your Honor, would you like an explanation? You want me to ask——

The Court: All right.

Q. (By Mr. Randall) Mr. Steska, the first part, is that the report and then the last letter approves the report, am I correct? A. Yes, sir.

Q. Now, Mr. Steska, let's start first then with the jurisdiction of Local 562 and if you would look at the map that we have out here, where does Local 562 have jurisdiction on this, if we can look at this map? A. Everything within the boundary lines marked in red. [1,774] There's sixty-one and a half counties there.

Q. You're talking about this boundary line here (indicating)? A. Yes, sir. We exercise jurisdiction over better than half of the State of Missouri.

Q. Well, do you have complete jurisdiction over all of those counties, all jobs in those counties? A. All major jobs.

Q. In other words, some locals—— A. That's right.

Q. ——have jurisdiction over small jobs? A. That's correct.

Q. Now, we notice here, and this is just one outline, the whole area that you have jurisdiction over all major jobs, am I correct? A. That's right, and jobs coming under the prevailing wage rate of the State of Missouri are also covered under our jurisdiction.

Q. Now, is there some areas where you have jurisdiction even over the minor jobs? A. Oh, yes, sir.

Q. Well, that is not indicated on this chart, is it? A. No, none of them are indicated. We are just indicating all counties in which local Union 562 has jurisdiction.

[1,775] Q. Now, does this other chart, does it indicate the areas where other locals have partial jurisdiction? A. Yes, sir, it does.

Q. I wonder if we could turn that around where everybody could see it?

Now, would you indicate to the jury, turn it around so the jury and also counsel over here can see it. What color area do you have jurisdiction over all jobs? A. The areas marked in red, all piping in the area marked in red, we exercise jurisdiction over all major and minor jobs.

Q. All right, now, looking at this green or this dark green area, what jurisdiction does Local 562 have over that area? A. All major jobs, powerhouses, industrial plants, processing plants, and work coming under the prevailing wage rate of the State of Missouri.

Q. All right, now, what local has jurisdiction over the remaining jobs? A. Local 318.

Q. Of Cape Girardeau? A. That's right.

Q. Now, looking up at the orange area, what jurisdiction does Local 562 have over that, sir? A. There again we have all major jobs, powerhouses, [1,776] processing plants, industrial plants and work coming under the prevailing wage law in the State of Missouri.

Q. And what local has jurisdiction over the remaining jobs? A. Local 581 from Hannibal.

Q. Now, looking at the blue area in the middle part of the State, what jurisdiction does 562 have over that? A. We have no jurisdiction over the blue area.

Q. How about the white area? A. The white area we do. We have jurisdiction over the white area.

Q. All of it? A. No, sir, just on major jobs, again like powerhouses, industrial plants, processing plants and

work coming under prevailing wage law of the State of Missouri.

Q. What local has jurisdiction over the remaining? A. Local 279 at Jefferson City.

Q. I have now covered all the area of 562, have I not? A. Yes, sir, you have.

Q. In other words, there are three locals who have jurisdiction over the same area that you have on major jobs only, am I correct? A. That's correct.

Q. Cape Girardeau, Hannibal and Jefferson City? [1,777] A. That's right.

The Court: The white area, who has jurisdiction over that?

The Witness: We exercise jurisdiction over those major jobs in the white area.

The Court: What about the blue area right above it?

The Witness: The blue area we don't. That is Local 317 out of Columbia, Missouri. They have about three and a half counties, I think.

The Court: You have no jurisdiction at all over that?

The Witness: No, sir, we have no jurisdiction in that area.

Q. (By Mr. Randall) Now, Mr. Steska, looking at your contract, your prevailing contract, or from memory if you don't need it, would you tell the Court and jury the wage scale, the prevailing wage scale in your local, describing the zone situations and all of that? A. Well, we have three wage scales in effect in Local 562.

If you don't mind, I would like to refer for accuracy to the contract.

We start off at $5.60 in one zone for journeymen.

Q. Where is zone 1? A. Zone 1 is the City of St. Louis and St. Louis County.

Q. Now, sticking with journeymen, take zone 2, will you? [1,778] A. Yes, sir. Zone 2 is the jobsite within twenty miles beyond the boundary line of St. Louis, Missouri.

Q. The next border around St. Louis is zone 2? A. Within a twenty-mile radius, yes, sir, St. Louis County.

Q. St. Louis County.

The Court: Wait a minute. Is twenty miles from the boundary line of St. Louis County or boundary of St. Louis?

The Witness: Boundary of St. Louis County, Your Honor.

The Court: OK.

Q. (By Mr. Randall) And what is the prevailing wage rate for journeymen in that zone? A. $5.98 per hour.

Q. In other words, it is higher as you get away from St. Louis? A. Thirty-eight cents per hour higher.

Q. Now, you have a third zone. A. Yes, sir, we have. Does that cover the rest of all of your area of jurisdiction? A. Yes, sir, zone 3. Jobsite, more than twenty miles beyond the boundary line of St. Louis County, Missouri.

Q. And what is the wage rate of journeymen out there? A. $6.16 per hour.

[1,779] Q. Now, sir, I will ask you what has been—First of all I will ask you this: Do you refer from your Union hall people to contractors for employment? A. Yes, sir, we do.

Q. And what has been your referral policy in that respect? Who do you start with? A. Well, we start with the contractor calling when he is in need——

Q. No, I'm talking about who do you start referring first? A. We start referring Local 562 journeymen first.

Q. All right, and then second? A. Second, the people who would be in a particular area, if it would be a job, it would be in the northern area, we would take Local 581 first, southern area we would take Local 318 first or vice versa. We would take those locals and Local 279 also.

Q. In the central area? A. That's right.

Q. So that is it a fact that the people who work under your jurisdiction down in southeast Missouri from 318 receive a higher wage than your people who work here in the St. Louis area? A. Yes, sir, they would be getting 56 cents an hour [1,780] more than the people in St. Louis.

Q. Now, while we are on that subject, sir, do a lot of people from these three locals work under the jurisdiction of 562? A. Yes, sir, they do.

Q. And do they do that pretty regularly? A. Yes, sir.

Q. During what period? Have you had periods where there was short work and it was a little more difficult? A. Oh, yes, sir, we had a period in 1960 and '61 where we had over 400 of our own people out of work, Local 562 members.

Q. I see. A. For almost a year, a little over a year, I believe it was.

Q. Now, sir, we have taken the journeyman's wage in those three zones. What about the foreman? A. The foreman gets 50 cents per hour more than a journeyman. I could give you the wage scale.

Q. It's the same thing for each zone except 50 cents up? A. That's right.

Q. Is there another classification? A. Area foreman gets 75 cents per hour more than the journeyman, and another classification is the general foreman and he receives one dollar per hour more than the journeyman.

[1,781] Q. Now, sir, what is your provision in your contract with respect to overtime? A. Overtime is computed at double time or double the straight time hourly rate.

Q. Now, what is paid in to your pension and welfare fund per hour? A. Two dollars seventeen and a half cents per hour.

Q. Is that double for—double for overtime? A. No, sir, that is on a straight time hourly basis.

Q. Now, sir, is that paid in for members of your local and also non-members who work under your jurisdiction? A. That is paid in on any and all employees.

Q. Is there any distinction whatsoever made in your trust funds with respect to members of Local 562 and non-members? A. No, sir, it's all referred to as employees.

Q. Now, sir, do you know how much you have paid from September '63 to September '68 from your trust funds to non-members? A. Yes, sir. If you will let me refer to my information, it's over $600,000.

Q. How much is it, sir? A. $645,921.77.

Q. And do you know how many non-members were involved in that? Do you have a list of them there? [1,782] A. Yes, sir, the total is 451 non-members, non-member employees who have been paid these benefits.

Q. Have been paid benefits? A. That's right.

Q. During that period? A. That is the period of time between September 1963 and September 1968.

Q. Now, do you have a provision in your contract in relation to wages, Mr. Steska, for show-up time? A. Yes, sir, we have.

Q. And what is that provision? A. Two hours, a man is entitled to two hours show-up time.

Q. In other words, if he shows up and they don't put him to work he gets paid two hours? A. That's correct.

Q. Now, Mr. Steska, do you have an exclusive hiring hall provision in your contract? A. No, sir, we have not.

Q. And by that would you tell us what the hiring situation is? A. We have what is termed as a non-exclusive hiring hall procedure.

Q. And by that it means what, sir? [1,783]. A. By that it means that the employer will call the Union hall, ask for employees to be referred to his job. If the Union hall is unable to fulfill his request he is permitted to obtain the employees anywhere he can get them. There is a section in here, if you would care for me to refer to it.

Q. Yes, you may. A. You want me to go into it?

Q. Yes, you may refer to it, explain it. A. This is entitled "Article 4, Manner of Employment, Section 1. The parties recognize the fact to be that the Union's knowledge and experience within the industry here involved, together with the sources of competent manpower available to it, can be of assistance to the employer in recruiting needed journeymen employees. For this reason, it is the mutual desire of the parties to establish a non-exclusive referral system whereunder the Union shall be given an opportunity to recommend journeyman job applicants as they are needed by the Employer, and thus be able to compete with other sources in the placement of journeymen employees.

"It is therefore understood and agreed that the Employer shall notify the Union whenever journeyman employees are to be hired and shall afford the Union an opportunity to recommend journeyman job applicants. The Employer further agrees to give such applicants due consideration, consistent [1,784] with the provisions of the National Labor Relations Act, as amended.

"The notification of needed journeyman employees shall specify the name of the contractor and location of the job in question, the probable duration of the job, the class or classes of employees to be hired, the number of employees required in each class, the probable length of em-

ployment of those in each class, and the experience and qualifications desired of employees.

"The Employer shall notify the Union whenever employees are hired, giving their names and addresses and the job classifications in which they will work.

"The Employer retains the right to reject any job applicant referred by the Union.

"The number of men to be employed is at the discretion of the Employer.

"The Union shall refer only persons who are available for employment.

"The Employer reserves the right of management at all times and may select, in the case of reduction or replacement of the working force, those workmen it desires to retain.

"The Union agrees to recommend the most competent available workmen to the Employer on request, provided, however, that the Employer shall have the right to determine the [1,785] competency and qualifications of its employees. The Employer shall not discriminate against any person by reason of his membership in the Union or his participation in its lawful activities. Neither the Employer, nor the Union, shall discriminate against any person by reason of his race, color or creed.

"The Employer agrees to hire only qualified journeymen who have served as apprentices and/or worked at the trade five years or more in learning and assisting in the trade of installing, repairing and service work.

"It is agreed that no apprentices shall be hired except upon referral to the Employer by the joint Apprenticeship Committee, or its authorized representatives. It is understood, however, that this exclusive means for the employment of apprentices shall be subject to the following objective standards:

"Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or

in any way affected by, Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies, or requirements.

"The Employer retains the right to reject any job applicant referred by the joint Apprenticeship Committee.

"The parties hereto shall post in places where [1,786] notices to employees and applicants for employment are customarily posted, all of the provisions of this Article and the provisions of the Apprenticeship standards.

"Apprentices shall be paid a progressively increasing scale of wages based on the following percentages of applicable journeyman wage rates:

"First year, 45 per cent; second year, 55 per cent; third year, 65 per cent; fourth year, 75 per cent."

Q. That pretty well covers—— A. Yes, sir, we're going off into—but it was in that same article.

Q. I think that is enough.

Now, Mr. Steska, you said that the Voluntary Fund was first originated in 1949. A. Approximately, yes, sir. It was right after the 1948 presidential election.

Q. Would you tell us what the contributions to it was at that time and its origin? A. To the best of my recollection——

Mr. Riddle: Just a minute, we will object to that as being indefinite. It calls for such a vague type of answer, gives the witness a roving commission to say anything he wants to.

The Court: Well, come up, please.

[1,787] (Thereupon the following colloquy ensued among the Court and counsel at the bench, out of the hearing of the jury:)

The Court: What is the purpose of going beyond the period in the indictment?

Mr. Randall: Your Honor, they have gone beyond it. They've got these minutes in back in '62 and I have to go back there in order to explain the situation. It's absolutely essential. This won't——

The Court: I'm just trying to find out.

Mr. Randall: I think it will clarify itself in just a moment or two after two or three questions, Your Honor.

The Court: As a matter of fact, I didn't know why there was an objection about going beyond the period of the indictment before, but, OK, let's go.

(Thereupon the further following proceedings were had in the presence and hearing of the jury:)

Q. (By Mr. Randall) Sir, what were the contributions originally into the Voluntary Fund? A. Twenty-five cents per hour.

Q. Was that both by members and non-members? A. It was by anyone who was working in the area at that time, sir.

Q. Were non-members to pay assessments? A. Yes, they were.

[1,788] Q. To the Local? A. Yes, sir.

Q. And what was the assessment of members and non-members? A. Twenty-five cents per each working day.

Q. Now, if we could come up into November of 1962, sir, what was being paid by members and non-members as assessments in November of '62? A. Fifty cents per day.

Q. By each? A. Yes, sir.

Q. And what was being contributed by members and non-members into the Voluntary Fund? A. Fifty cents per day.

Q. Were you getting ready at that time to begin to negotiate a new contract? A. Yes, we were, in the fall of 1962.

Q. And who was your attorney in that respect? A. Mr. Harry Craig.

Q. And were you consulting with him concerning these matters? A. Yes, we were.

Q. Take this, sir.

Now, sir, were you a member of the Executive Board of Local 562 at that time? [1,789] A. No, sir, I was not.

Q. You were not a member of the Board? A. No, I was the president.

Q. You were the president. Are you a member of the Board now? A. No, sir.

Q. Do you sit in on their meetings? A. I do as the president, I do.

Q. All right, sir. Now, immediately prior to November 21st did you and Mr.—Incidentially, was Mr. Lawler, Mr. John Lawler, an officer of 562 in November of 1962? A. Yes, he was. He was the business manager.

Q. He was the business manager. Was Mr. Callanan an officer of Local 562 at that time? A. No, sir, he wasn't.

Q. Was Mr. Seaton an officer of Local 562 at that time? A. Yes, sir, he was. He was the vice president.

Q. And did he hold an appointive position too? A. Yes, sir.

Q. What was that? A. He also was a business representative.

Q. Now, who were the officers of the Voluntary Fund at that time? A. Mr. Lawler.

[1,790] Q. What was his position? A. He was a director of the Voluntary Fund.

Q. Was Mr. Seaton an officer of the Voluntary Fund at that time? A. No, sir.

Q. Was Mr. Callanan an officer of the Voluntary Fund at that time? A. No, sir.

Q. Prior to this meeting of the Executive Board on November 21st did you have a conference or a meeting with Mr. Harry Craig? A. Yes, sir, we did.

Q. Who was present? A. Mr. Lawler, Mr. Craig and myself.

Q. Was Mr. Seaton present? A. It's possible but I don't recall Mr. Seaton being there.

Mr. Riddle: I didn't hear who he said was present.

Mr. Randall: He said Mr. Lawler and himself—well, pardon me, tell us who was present.

A. Mr. Lawler, Mr. Craig and myself.

Q. All right. Now, sir, did he make any recommendation to you at that time concerning assessments and checkoffs?

The Court: "He" being who?

Mr. Randall: Mr. Craig, Mr. Harry Craig.

[1,791] A. Yes, sir, we——

Mr. Riddle: Just a second. I want to object to anything that is not responsive to the question. His answer was "yes."

The Court: All right.

Q. (By Mr. Randall) All right, and what recommendation did he make to you, sir? A. He made a recommendation——

Mr. Riddle: Just a minute, I want to object to that. He can ask him what Mr. Craig said to him. The recommendation would be in the form of a conclusion.

The Court: All right.

Q. (By Mr. Randall) What did Mr. Craig say to you people concerning that subject matter? A. He said it would be perfectly all right and permissible to have a checkoff system.

Q. Anything further? A. Yes, sir, he said we should get into a checkoff system.

Q. Did he say anything with respect at that time to assessments applying to both members and non-members? A. No, sir, not at that time.

Q. Did he say anything at that time with respect to the Voluntary Fund? [1,792] A. No, sir, not at that time.

Q. Would you open up the minute book and turn to the minutes of the Executive Board for November 21st? Do you have that there? A. Yes, sir.

Q. Now, did you have any conversation with Mr. Harry Craig concerning the action that was taken at that time? A. Yes, sir, we did.

Q. Was it prior to the time the action was taken? A. That was prior to the Executive Board meeting, that's correct.

Q. All right. Now, what did he say to you with respect to the action that was taken there at that time? A. He said it would be perfectly all right to have the checkoff system in its present form the way we discussed with them. We were atempting to get——

Mr. Riddle: I want to object to that as being non-responsive.

The Court: Don't volunteer, Mr. Steska.

Q. (By Mr. Randall) I'm trying to ask you what Mr. Craig told you in connection with that matter. A. He told us in its present form that the checkoff system was fine and he recommended it.

Q. For both the Voluntary Fund—— [1,793] A. For both the Voluntary Fund and the dues and assessments.

Q. And for both members and non-members? A. And both members and non-members.

Q. All right. Now, did he tell you you had to do anything in addition to the Voluntary Fund? A. No, sir, not at that time.

Q. Well, was there any discussion concerning the card with Mr. Harry Craig in connection with that? A. Not at that time.

Q. Now, did you take the action then on November 21st that is reflected in that minute? A. We didn't. We attempted to but we——

Q. I know. A. No, sir.

Q. Did you pass that minute? A. We passed this, yes, sir.

Q. Now, would you please read the minute? A. You want the first minutes or just that section?

Q. I would like that part with respect to checkoff and assessments.

The Court: I think, Mr. Steska, what you hold in your hand, you've got the minutes, that is probably a Government exhibit, isn't it?

[1,794] Mr. Randall: Yes, it is, Your Honor.

The Court: What is the number of the exhibit?

Q. (By Mr. Randall) What is the number of that one, sir?

It's 105, Your Honor.

The Court: 105?

The Witness: Oh, yes, right here. Says "Government's Exhibit 105, 9/5/68."

The Court: OK. I didn't think we went that high. OK. This is the beginning of it here.

Q. (By Mr. Randall) First of all, why don't you read the first paragraph and then turn over and read that part dealing with checkoff, et cetera? A. "Meeting of Execu-

tive Board called to order at 1:00 p. m. November 21, 1962. Your Executive Board met again on Wednesday, November 21, 1962, and after long hours of discussion on the many serious problems your business manager and the secretary-treasurer brought to our attention the problem regarding the Local Union's financial condition."

Q. All right, now, would you turn over to the part about checkoff, and may I interrupt you, was this in contemplation of negotiating a new contract at that time? A. Yes, sir, it was.

Q. When was your contract expiring? A. On the 14th of June, 1963.

[1,795] Q. Now, read that part over there. A. "All of you members know that you have received many pay increases these past fifteen years but your dues have remained the same, although the cost of operating your Local Union has gone up many times over. So has everything else gone up. For these many facts that we have pointed out to you members hoping that you will use sound judgment in your voting. Your Executive Board unanimously recommends that our Local Union members adopt a dues checkoff system for each journeyman and apprentice. That amount shall be 4 per cent assessment plus dues of each member's gross pay to be paid to the Secretary-Treasurer every week by the employer. Out of this the Secretary-Treasurer shall keep two and one-half per cent for the purpose of operating our Local Union. The Secretary-Treasurer shall turn over one and a half per cent of the 4 per cent to the business manager, who has charge of our Voluntary Political, Educational and Legislative Fund. Under our present wage scale this should give the Secretary-Treasurer ninety-two one-half cents a day per man and your Voluntary Political, Educational and Legislative Fund fifty-five one-half cents a day per man. This will mean an increase of 48 cents a day for each member. This 4 per cent assessment plus dues to take

effect as soon as the business manager can get our Contractors Association, and all others who hire our building [1,796] trades journeymen and apprentices to agree to the checkoff system. Brothers, there cannot be any vote or debate on this question today because before you can vote on this recommendation of your Executive Board we now must give reasonable time and send out a letter to each member stating they will be voting on an increase of 48 cents a day. A letter will be sent to each member this coming week notifying them of the increase proposed and that the Board's recommendation will be voted on at our next meeting to be held on December 12, 1962."

Q. Now, that was in the form of a report which you intended to make to the membership on November 24th, am I correct in that, sir, that you have just read? A. That's right.

Q. All right, now, sir, was it your intent and purpose to have this checkoff applied to both members and nonmembers? A. Yes, sir, it was.

Q. Now, did Mr. Craig tell you that in order to conduct——

Mr. Riddle: I want to object to the form of that question, Your Honor.

Mr. Randall: All right.

Did Mr. Craig tell you anything else was needed in conjunction with that program? A. At that time?

Q. Well, at any time. [1,797] A. Well, he called about a day or so afterwards and told us that we couldn't put in the assessment and Voluntary Fund and the dues checkoff as such the way we had it set up there.

Q. Well, all right. Now, why did he tell you you couldn't do that? A. Me——

Mr. Riddle: I want to object to why he told him that?

Mr. Randall: All right, pardon me, sorry. I'll withdraw that question.

Did he tell you why you couldn't do it? A. He told me——

Q. Just answer that yes or no. A. Yes, he did.

Q. What did he tell you was the reason you couldn't do it that way? A. He told us that if we checked off on every employee, 562 members and non-562 members alike, that we would very well open the doors for everybody who was working in our area to become members, and that he strongly advised against it.

Q. Against—— A. Against having a checkoff system for anyone other than 562 members.

Q. For assessments? [1,798] A. For assessments and dues, yes, sir.

Q. Did he make any recommendation at that time with respect to continuing assessments for non-members? A. Yes, he said we shouldn't accept assessments from non-members in any form into the Union.

Q. All right. Now, if you will now turn to the minutes of the membership of November 24, '62, and do you find in their that the report of the Executive Board that you just read was presented to the membership, and if you find something like that, read it, please. A. There is a paragraph here.

Q. All right, read that paragraph. A. "Report of the special meeting of Executive Board held on Wednesday, November 21, 1962, at our office was read and it was laid over to our regular meeting to be held on December 12, 1962."

Q. All right. A. "Business Representative Brother John Lawler explained that on advice of our attorneys this would have to be taken up at our regular meeting and all members will be sent a letter on this."

Q. All right, now, Mr. Steska, following that meeting of the membership on November 24th, on the next day did you have a meeting with Harry Craig? [1,799] A. Yes, we did.

Q. And what did he tell you at that time?

Mr. Riddle: I want to object to that also unless he identifies who was present, where and when it occurred.

Q. All right. First of all, I will get to that, but first of all, Mr. Steska, would you look, to help refresh your recollection, at the minute of November 25, '62, the next minute of Executive Board? A. I've got it.

Q. Now, sir, prior to that minute of the Executive Board on November 25th, the next day, did you meet with Harry Craig? A. Yes, sir, we did, Mr. Lawler and myself.

Q. All right, and anyone else? A. Possibly Mr. Seaton was there but I don't recall Mr. Seaton, but definitely Mr. Lawler, Harry Craig and myself.

Q. Were any other attorneys there? A. Not when we discussed it with Harry.

Q. I see, no one else was present? A. No, sir.

Q. All right, now sir, what did Mr. Craig tell you people at that meeting? A. Harry Craig said he had been giving the contemplated checkoff system a considerable amount of thought and he had consulted with his partner, Jack Wiley, and it was [1,800] the consensus of their opinion that we would be wrong if we continued on and put the checkoff system in its present form the way we had tried to adopt it. He recommended that we didn't do that, that we separate the checkoff system, confine it strictly to Local 562 members, completely divorce the Voluntary Fund, set up a separate fund for that, and at no time accept any contributions or any assessments from local—from other than local 562 people into the Secretary-Treasurer's office of our Union.

Q. All right, sir. Now, would yon now read the minute of the Executive Board of November 25, '62? A. "Brothers, your Executive Board was again called back into session by your business manager on November 25th, 1962.

"He explained that on the advice of our lawyers for Local Union 562, the lawyers being Mr. Morris Shenker, Mr. John Wiley and Mr. Harry Craig, explained that in their opinion if the members of Local Union 562 voted and adopted a 4 per cent dues and assessment checkoff system, and then took one and one-half per cent from the total 4 per cent for our Voluntary and Defense Fund, we would be in conflict with the Landrum-Griffith Law.

"That is why we recommended that a letter be sent to each member stating that at our next regular meeting on [1,801] December 12, 1962, that you now on that date will be voting for two and one-half per cent of gross pay earned for each day worked, plus $3.50 per month for dues. All of this money shall remain in the Local Union's treasury for the purpose of operating the Local Union. Starting on the 1st of January, 1963, your Secretary will only collect from dues paying members of Local Union 562, and those on application.

"Your Executive Board realizes that even though you members vote to adopt this two and one-half per cent of gross pay earned by each member for each day worked, plus $3.50 per month for dues, it is going to take the business manager some time before he will be able to get the employers hiring building and construction trades journeymen to sign supplements or amendments to our present collective bargaining agreements to establish checkoff or periodic dues and assessments.

"The Executive Board recommends that a special meeting be called and that each member be notified by letter when the effective date will be for the checkoff system to start. Until then all members will remain paying the same dues and assessments as we are now paying and they will

be collected in the same manner as they are now being collected.

"Your Executive Board is very concerned about our new coming contract, especially our financial condition. If we have to strike, and we may have to, to gain a decent agreement [1,802] this coming June, something soon will have to be done about raising the money for such necessities as groceries, fuel, rent, and many other things that are both necessary and vital in the winning of a strike. Many other problems which are most serious and vital to the Local came before your Board for discussion. We report to you on some of these at a later date.

"Having no further business your Board adjourned."

Q. Now, Mr. Steska, did the membership meet on December 12th of 1962, to consider that recommendation? A. Yes, sir, they did.

Q. Would you turn to the minutes of that meeting? A. I've got it.

(Thereupon Defendant Union Local 562's Exhibit LL was marked by the reporter for the purpose of identification.)

Q. Now, Mr. Steska, was Mr. Craig and Mr. Wiley present at that meeting of the membership? A. On December 12th?

Q. Yes, sir. A. Yes, sir, they were.

Q. Would you read the minutes of that meeting, sir? A. "Minutes of regular called meeting held at the Teamsters Hall, 4141 Forest Park Blvd. on Wednesday, December 12, 1962.

"Minutes of the meeting held on November 24, 1962, [1,803] were read and were received as read.

"For clarification purposes the report of the Executive Board meeting held on November 21, 1962, was read.

"The Executive Board report of the meeting held on November 25, 1962, was read and on motion it was concurred in.

"Secretary and Treasurer Brother John F. Burke read the financial report of our Local Union for the year starting October 1, 1961, to September 30, 1962, and stated that we went in the red last year $96,000.

"A motion was made and seconded that Brother Burke's financial report be accepted as read. Motion carried.

"Business Manager Brother John L. Lawler commented on the nice showing of the brother members present at the meeting, and is glad of the interest shown by them by their attendance.

"He read about the two and one-half per cent and $3.50 dues checkoff system and will do everything possible to have it enjoined in our new agreement.

"He explained that the majority of our contractors do not belong to the Contractors Association and some of them have their main offices elsewhere, so they probably will have to take this up with their lawyers.

"He said there will have to be authorization cards [1,804] signed by our members in order for the contractors to withhold this from your pay and that is the only way it can be done.

"He is concerned about the new agreement as to how they will act when they ask them for what we are going to ask for.

"Some of our members have not worked very steady and some of them have lost their homes, and a lot of our employees have brought this on by chiseling on jobs in order to get contracts and then undermanning the jobs, and also some of our other members are at fault by putting in inferior work and other things for their boss."

Q. Would you move on to the checkoff, the matter concerning dues and assessments and checkoffs? A. Shall I read the letter of notification to the members informing them of what they were going to vote on?

Q. Is there a letter of notification in that minute book? A. Yes, sir, there is.

Q. And which the members were sent ahead of time and notified of what—— A. Informing them of a meeting to be held on Wednesday, December 12, yes, sir.

Q. For the purpose of determining the dues and assessments and checkoff that would be asked for in their new contract? A. Yes, sir.

[1,805] Q. Just read the part of the minutes then concerning the taking of the vote and who took it and who counted it and that sort of thing. A. Disregard this letter?

Q. Yes. A. In order to pick this up I will have to start—"He said we will vote tonight but it will not go"——

Q. Pardon me, "He said," who is talking now? A. This is Mr. Lawler talking.

Q. All right, now, go ahead. A. All right.

Mr. Lawler "said we will vote tonight but it will not go into effect until it is accepted by the contractors and only building trades journeyman pipefitters can vote on it, although the metal trades were invited they don't vote on the question, such as Hussmann Refrigeration Company and metal tradesmen at Midwest.

"All that is to be voted on tonight is the two and one-half per cent and the three dollar fifty cent dues to be checked off by the contractor, and if you are in favor you vote 'yes' and if you are against it vote 'no', and told the members not to let the member next to you see how you vote, and if you don't have enough secrecy go over to the side by yourself and mark your ballot, as this has got to be a secret [1,806] ballot.

"Brothers Joe Brice, Maurice Conlisk, Elmer Arterbury and Herb Tindle were appointed observers, and our lawyers, Mr. Jack Wiley and Mr. Harry Craig, will do the counting of the ballots and certify the count.

"The ballots were passed out to all of the members and while waiting for the count, Business Manager Lawler, called the members to attention and told them that unless it is an emergency call, do not accept any calls from the contractor after 4:30 p.m.

"The count was taken of the ballots that were cast and the official vote verified by Mr. Jack Wiley and Mr. Harry Craig was 'yes', 434; 'no', 12; 'void ballots', 1; 'ballots cast', 447."

Q. Mr. Steska, we have marked here Local Union's Exhibit LL. Is that a copy of that notification that is contained in that minute book? Is that the same thing? A. I believe it is. Yes, sir.

Q. All right.

(Thereupon Defendant Union Local 562's Exhibit MM was marked by the reporter for purposes of identification.)

Q. Now, Mr. Steska, was a meeting called of the Voluntary Fund around this time? A. Yes, sir.

[1,807] Q. Do you know what day, on what day it was called? A. On Sunday, December 16th.

Q. And I will hand you what has been marked Local Union 562 Exhibit MM, and I will ask you what that is? A. It's a copy of a notice sent to——

Q. To whom? A. To all contributors to the political action for the Political Fund, as it is known.

Q. Where did you obtain this copy that is here? Did you obtain this copy? A. Yes, I got that from the printer.

Q. From the printer? A. Yes, sir.

Q. And Mr. Steska, was a meeting of the Voluntary Fund held——

Mr. Riddle: Just a minute, I want to object to the form of that question. That is a suggestive question. There is nothing on this exhibit that indicates it is a Voluntary

Fund. That is a figment of imagination of Mr. Randall. He is putting words in this witness's mouth.

The Court: All right. It will be sustained as to the form of the question.

Q. (By Mr. Randall) Was a meeting of the Voluntary Fund held around that time? [1,808] A. Yes, sir.

Mr. Riddle: I want to object to that. He can describe what kind of a meeting it was. He's suggesting the term instead of asking the witness, Your Honor.

The Court: Well, let him look at this.
I'll sustain the objection. Strike the answer.

Q. (By Mr. Randall) Mr. Steska, was some kind of a meeting held on December 16th, Sunday, 1962, at 3:00 p. m.? A. Yes, sir, there was.

Q. And where was it held? A. I believe it was held at Teamsters Hall, possibly the Electricians hall. We have difficulty sometimes obtaining rental space in the halls on a Sunday.

Q. I show you Local's Exhibit MM and ask you if that refreshes your recollection? A. Yes, sir, it does.

Q. Now, who was notified of that meeting? A. All the contributors that we were able to reach.

Q. Contributors to what? A. To the Voluntary Fund.

Mr. Riddle: I object to that. He can say who was notified. He is giving conclusions on his part. If he knows who was notified. He is generalizing. I ask his answer be stricken.

[1,809] The Court: All right. I'll sustain the objection. The answer will be stricken. The jury will disregard it.

Q. (By Mr. Randall) Who was present at the time at the meeting? A. Members and non-members alike.

Q. Of what group? A. The pipefitters group.

Q. Well, was any vote taken at that meeting with respect to contributions to the Voluntary Fund? A. Yes, there was.

Mr. Riddle: I object to that as a leading and suggestive question. He can ask him what took place and let the witness testify for himself.

The Court: Well, I don't think that question is necessarily leading or suggestive and the answer will stand.

All right, you can proceed.

Don't ask him any leading questions.

Q. (By Mr. Randall) Was a vote taken? A. Yes, sir.

The Court: He answered that.

Mr. Randall: I'm sorry.

Now, what was the result of that vote? In other words, what action was voted on? A. The action that was voted on that the contributions [1,810] to the Voluntary Fund would be increased.

Q. How much and for what group? A. They were increased 50 cents. Let's see. They were increased to $2.00, I believe, from a dollar and a half to $2.00, or let me—Could I see that again, the date there, because we had several increases around that period of time.

Q. Mr. Steska, what were the contributions immediately prior to December—— A. I've got it now.

Q. You recall that? A. It was 50 cents and 50 cents. It was a dollar a day. It went up fifty cents to a dollar fifty cents.

Q. Went up fifty cents for whom? A. For both. We went up to a dollar for members of 562 and a dollar and a half for non-members of 562.

Q. And immediately prior to that time what was it each paid? A. Fifty cents a day.

Q. Each. All right. Now, sir, was any action taken at that time with respect to collecting assessments from non-members? A. Yes, it was also discussed and voted on that non-members of Local Union 562 would no longer contribute or pay assessments to Local Union 562.

Q. All right. Now, in the meantime, sir, I will hand [1,811] you what has been admitted into evidence as Local 562 Defendant's Exhibit A, sir, and have you take a look at that. What is that, sir? A. This is titled "A Voluntary Contribution Agreement."

Q. Do you know who prepared that agreement? A. Yes, sir, the drafting of the wording was prepared by Mr. Harry Craig.

Q. All right. And do you know when the Union began to obtain these cards, these signed cards then? A. Yes, sir, January of 1963.

Mr. Randall: Your Honor, I now offer into evidence Exhibit LL and MM.

The Court: Be received.

(Whereupon Defendant Union Local 562's Exhibits LL and MM were received in evidence.)

Q. (By Mr. Randall) Now, Mr. Steska, do you remember when you concluded your contract negotiations? A. Yes, sir.

Q. When was that, sir? A. August 29th—Actually August 27th, I believe it was, of 1963, went into effect August 29th, 1963, but we really didn't get the contract signed until sometime in October.

Q. Do you recall when you began to obtain checkoffs of dues and members, dues and assessments of members? [1,812] A. Yes, sir, it went into effect October 14, 1963,

and the dues was checked off starting the first—it would be the 10th of the month of January of 1964.

(Thereupon Defendant Union Local 562's Exhibit NN was marked by the reporter for the purpose of identification.)

Q. Now, Mr. Sfeska, I hand you what has been marked Local Union 562 Exhibit NN and I will ask you if you will look at the second page of that.

What is that? A. It's a notification from the Union to the employers informing them of the dues checkoff and the amounts.

Shall I read it so that they——

Q. Well, who prepared that letter? A. Harry Craig prepared the letter.

Q. All right, and does it tell in that letter somewhere when the checkoffs are supposed to start? A. Yes, sir.

Q. What is the date? A. "We call your attention to the fact that you are to check off and remit to us weekly for and on behalf of all Local 562 employees who execute a checkoff authorization. In the case of the dues which are payable only once each week, as distinguished from the assessments, checkoff dues for all persons on your payroll on the 10th of each month beginning [1,813] January 10, 1964.

"Take notice that checkoff of periodic assessments shall begin as of October 14, 1963, and each week thereafter."

Q. Now,—— A. "Checkoff only applies to members of Local Union 562."

Q. Now, I hand you again Exhibit MM and ask you to read that, sir. A. It says, "Dear Sir:

"There will be a meeting concerning political action Sunday, December 16, 1962, at 3:00 p. m. at the Electricians hall, 5850 Elizabeth Avenue.

"Take notice of new location.

"Refreshments will be served.
"Very important . . . Please be present.
"George Seaton
"John L. Lawler"

Q. Now, Mr. Steska, was there a meeting around this time of the Voluntary Fund? A. Yes, sir.

Mr. Riddle: I want to object to that. He can say what kind of a meeting it was and what happened there but for him to characterize it as a meeting of the Voluntary Fund, again, it's nothing that this witness would be suggested for its name, or the question.

[1,814] The Court: I'll sustain the objection.
Come up, please.
Please come up.

(Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

The Court: I think in the interest of saving your time and the Court's time and the jury's time that if you will get around to when the thing was named and you can establish from there on, then I don't think there will be any validity to this objection. Until such time as that is done, however, the objection to the validity, I will have to sustain it as I am now.

Mr. Randall: Thank you, Your Honor.

(Thereupon the further following proceedings were had in the presence and hearing of the jury:)

The Court: We will have our morning recess at this time.
Members of the Jury, bear in mind the admonition I have given you before.

(Following a brief recess, Edward M. Steska resumed the witness stand for further direct examination as follows:)

The Court: You may proceed.

Q. (By Mr. Randall) Mr. Steska, I hand you Defendant's [1,815] Exhibit A, "Voluntary Contribution Agreement," and I would like you to read the first paragraph. A. "I, the undersigned, of my own free will and accord desire to make regular contributions to the Political, Educational, Legislative, Charity and Defense Fund, which has been established and will be maintained by persons who are members of Local Union No. 562."

Q. All right, sir, I will ask you when was the name given to the Fund, "Political, Educational, Legislative, Charity and Defense Fund"? A. January 1963.

Q. Prior to that time what name did you call it? A. It was commonly known as the Political Fund.

Q. All right. Now, my question is, sir, was a meeting held of the contributors to the Political, Educational, Legislative, Charity and Defense Fund, held in October 1963?

Mr. Riddle: Your Honor, I object to the form of that question. It's leading and suggestive. He can state who was there.

The Court: Well, it can be either way, depending on, I would think that—When was this, October '63?

Mr. Randall: Yes, Your Honor.

The Court: I am going to overrule that objection.

Q. (By Mr. Randall) You may answer the question. [1,816] A. Yes, sir, there was a meeting.

Q. Do you recall when it was held? A. No, sir, I can't recall the exact date. It was sometime in October, after a regular Union meeting.

Q. Do you recall where it was held? A. It was held at the Electricians hall.

Q. Now, sir, do you know whether or not the contributors to the Fund were notified of the meeting? A. Yes, sir, I am sure they were.

Q. Have you been able to find a copy of the notice from the printer? A. Unfortunately not. He went through all his files and he couldn't come up with several notices, but that was one of them.

Q. All right, sir, what action was taken at that meeting? A. It was voted on that the contributions for non-members of Local Union 562 be increased to $2.00 per day.

Q. Now, Mr. Steska, would you look at the Executive Board meeting minutes of November 3, 1965? A. I would have to get that book of minutes.

Q. Oh, I'm sorry.

Now, Mr. Steska, I hand you Government's Exhibit 106 and I will ask you to look at the minutes of the Executive Board meeting of November 3, 1965. [1,817] A. I have it.

Q. Was there any action taken there with respect to assessments of members? A. Yes, sir.

Q. Would you read the minute on that, please? A. "Executive Board meeting called to order November 3rd, 1965, Pipefitters office, 1242 Pierce Avenue, St. Louis, Missouri.

"Brothers, your Executive Board has been concerned for several months regarding the treasury and financial condition of Local Union 562. It is one of our main duties, each of us, that you elected to see that at all times we remain as financially sound as we possibly can be. We have discussed this problem many times with your Secretary-Treasurer, Brother Burke, and your Business Manager, Brother John Lawler, and Brother Callanan. We believe when the details are explained to all of you, all will agree as we do on this matter, because this will be not one extra

penny cost to members of Local Union 562. Therefore your Executive Board unanimously recommend that our present periodic dues of the building trades members, which are $3.50 per month plus two and one-half per cent of gross pay earned for each day worked be changed to $3.50 per month plus three and three-fourths per cent of gross pay earned each day to take effect January 1, 1966.

"Your Executive Board understands that a special [1,818] letter will be sent to each member of Local 562 and all other out-of-town men who will qualify and have 2,000 hours worked paid on them. Also that their wives will be invited to take part in the paying out of our first vacation money to you members. Refreshments will be served. It will start at 7:30 the night of December 6 at the Arena. Brothers, everyone who will be qualified and receive a letter please be there with your wife to receive your vacation check. As some may get lost in the mail, or sent to the wrong address as some members may have moved. The Welfare Director Brother Henry will explain and answer any questions you may have on this vacation money to be paid.

"Your Executive Board discussed many other matters regarding the good and welfare of Local Union 562 and will report on some of these matters at a later date.

"Meeting adjourned at 5:00 p. m."

Q. All right, would you look at the minutes of the membership, meeting of the membership of November 10, 1965, and see if that recommendation was approved by the membership? A. "A motion was made by Brother R. Kellet and seconded by Brother Joe McBride that the item of the Executive Board's report referring to the checkoff system, and also the report in its entirety be accepted. (Motion carried.)"

Q. And this increase in the assessments effective January [1,819] 1 of '66 is the one that is reflected here on this exhibit, is that right? A. Yes.

Q. You identified that exhibit before, you recall that? A. Yes, I did.

Q. And the increase was from what percentage to what percentage? A. From two and a half per cent of gross pay to three and three-quarters per cent of gross pay.

Q. And do you know what this chart was based on, which zone or which group reflects this chart? A. I imagine it's based on zone 1 from what I can see there.

Q. And if it were based on zone 2 would it be different? A. Oh, yes, and also zone 3 will be increasingly higher.

(Thereupon Defendant Union Local 562's Exhibit OO was marked by the reporter for the purpose of identification.)

Q. I show you what has been marked Local 562's Exhibit OO and I will ask you if you can tell me what that chart is, sir? A. Can I——

Q. Just tell me what it is first. A. Daily dues and assessments of members of Local 562, zone 1 in blue, zone 2 in red, zone 3 in green.

Q. And that is based on the percentage of assessments [1,820] now in effect? A. I would say yes, sir.

Q. And on the present pay scale? A. Yes, sir.

Mr. Randall: I offer it into evidence, Your Honor.

Mr. Riddle: We have no objection, but I think the date ought to be attached to it, otherwise we would have no idea——

Mr. Randall: Well, I will ask him those questions again.

The Court: Well, of course, he's already indicated the date was January 1966, wasn't it?

The Witness: This is the present time.

The Court: Oh. Well, the question is was it in effect since January 1966?

The Witness: No, Your Honor.

The Court: This is the present one?

The Witness: Yes, sir.

Q. (By Mr. Riddle) So that looking at that chart, sir, will you tell me from that chart what the assessments and dues of a journeyman of Local 562 amount to for one day, in one zone? A. Mr. Randall, I would appreciate it if you would bring it a little bit closer——

Q. You can't see?

[1,821] The Court: Two dollars and one cent. I can't see the middle.

Mr. Randall: I will move it up a little closer.

A. Tired old eyes are playing tricks on me.

Q. Can you see it there? A. Yes, sir.

Q. What is the dues and assessments of a journeyman for one day in zone 1? A. Dollar eighty-four cents.

Q. And in zone 2? A. Dollar ninety-five—One nine five.

Q. Is that one nine five? A. Oh, you're moving over into zone 2. One nine nine. I follow you.

Q. Zone 3? A. Two 0 six, journeyman.

The Court: You're getting over into foreman and everything. The journeyman is one eight four, one nine five and two 0 one, depending on the zone, and it goes up for everybody else, and the chart shows it.

Mr. Randall: All right, I mixed them up.

Now, Mr. Steska, was there a meeting held in November of 1965 of the contributors to the Political, Educational, Legislative, Charity and Defense Fund? [1,822] A. Yes, sir, there was.

Q. Can you recall the date of the meeting? A. No, sir, I can't.

Q. Do you recall the place of the meeting? A. I am almost certain it was the Electricians hall.

Q. Do you recall whether it was following a meeting of the Local or whether it was a separate meeting? A. I would say that it was a separate meeting.

Q. And were the contributors notified of the meeting? A. Yes, sir.

Q. And what action was taken at that meeting? A. They voted to increase the contributions to the Voluntary Fund from a dollar and a half to two dollars.

Q. We are now talking about 1965? A. 1965, and also to—let me go back a little bit, Mr. Randall.

We are moving this thing up and down here on these——

Q. Looking at this chart here, sir. A. Yes, by that time we had already voted, the contributors had already voted the two dollar voluntary contributions for non-members of Local 562. In that November '65 meeting it would have been voted on that we decrease the contributions of Local 562 members into the Voluntary Fund.

Q. By how much? [1,823] A. About fifty cents per day.

Q. Now, Mr. Steska, does your By-Laws and Constitution have a provision with respect to the payment of dues and assessments? A. Oh, yes.

Q. What does it say in that respect? A. It's in Section 142 of our Constitution.

Q. What does it say? A. "Effective January 1, 1967, the dues of each member of a Local Union shall not be less than five dollars per month. The dues of a new member shall commence from the date of initiation. Members initiated in any Local Union before the 20th of the month shall pay dues for that month. On and after the 20th of the month, the dues shall commence on the first of the following month.

"A Local Union shall increase dues or levy an assessment upon the membership by a majority vote by secret ballot after written notice shall have been given to the membership of the intention to vote upon the dues increase or the levying of an assessment. The written notice shall set forth the time and place where the vote will be taken, either at a regular or special membership meeting."

Q. Well, is there anything in there about payment or non-payment of dues? [1,824] A. Yes, sir, this is Section 176. "A member owing over three months' dues shall automatically be suspended from membership without notice of any kind. A suspended member is denied all rights and privileges and is not entitled to any monetary benefits."

Q. Now, does the By-Laws and Constitution have a provision with respect to a travel card? A. Yes, sir, it does.

Q. Would you read that, please? A. This is Section 180. "There shall be a card known as a travel card issued by the Financial Secretary of the Local Union only to Building Trades journeymen members fulfilling the conditions prescribed by sub-section (b) of this section, who desire to travel from one Local Union to another in search of employment. Travel cards shall be furnished to the Local Unions by the General Office and shall be in such form as the General President shall prescribe. Any Building Trades journeyman member shall obtain a travel card from the Local Union in which he holds membership before traveling to another local Union. Upon issuance, each travel card shall be signed by the member who receives it in the presence of the Secretary issuing the same.

"(b) A travel card shall be null and void unless deposited in a Local Union within thirty days from the date of [1,825] issuance thereof, or, in the event of further travel as provided for under sub-section (j) of this section, from the date of release of such card.

"(c) A travel card shall be issued to a Building Trades journeyman desiring same, if he meets the following conditions:

"(1) He must be in good financial standing with all legal and valid financial obligations paid up to date;

"(2) He must have held membership in the United Association for at least one calendar year just prior to the issuance of the card;

"(3) He shall not have charges pending against him for violating the rules or laws of the United Association or an affiliated Local Union.

"(d) Within thirty days from the date a travel card is issued, or, in the event of further travel, then within thirty days from the date of release of such card, the Building Trades journeyman member holding such card shall deposit it in the Local Union to which he is traveling, or return such card to his home Local Union. Such member desiring to deposit a travel card shall present it, together with his due book, to the Local Union Business Manager, or the officer or agent designated by him to receive travel cards, or, if there is no Business Manager, then to the Local Union Business Agent, or [1,826] the officer or agent designated by him to receive such cards. Such officer or agent shall accept any travel card properly presented by a Building Trades journeyman member. Upon such member depositing the travel card, he shall again be required to sign his name in the presence of the Local Union officer or agent receiving it for identification purposes. Such officer or agent shall, upon accepting such card, and in such manner and within such time and on such forms as the General President shall prescribe, give, or cause to be given, notice of deposit to the home Local Union of the traveling member.

"(e) Should any question arise as to the legality or validity of the issuance or acceptance of the travel card,

the officer or officers of the Local Union issuing or accepting the travel card shall give immediate notice to the General President who shall take appropriate action to adjust or decide the question so raised. The decision of the General President shall be final and binding, and there shall be no appeal from the decision of the General President to the General Executive Board.

"(f) When a member deposits his travel card in a sister Local Union, he shall continue to pay all his regular dues and assessments to the Local Union in which he holds membership, and shall retain all rights and privileges of membership in his home Local Union. Violation of this sub- [1,827] section shall be deemed just cause for a Local Union to refuse to accept further travel card dues from the traveling member and shall render the travel card null and void.

"(g) The traveling member shall also pay travel card dues in the sum of $8.00 per month in advance to the Local Union in which his travel card is deposited to help defray the additional administrative and collective bargaining expenses incurred by said Local Union and shall be given a receipt for payment of said dues. A member depositing a travel card in a Local Union before the 20th of the month shall pay travel card dues for that month. If such member deposits the card on or after the 20th of the month, the dues shall commence on the first of the following month. Such member shall be required to make payment to the Local Union in which his travel card is deposited only as set forth in this subsection and, except for such fines as may be lawfully levied under this section, he shall not be required to make any additional payments of any kind for any reason whatsoever.

"(h) Such member shall not be entitled to voice or vote in the Local Union in which his travel card is deposited, but shall enjoy the privilege of attending the

meetings of the Local Union, upon presentation of his due book properly stamped.

"(i) The traveling member shall abide by all working rules and regulations, or by-laws relating to working rules and [1,828] regulations, and collective bargaining agreements in effect in the Local Union in which his travel card is deposited. A traveling member violating this subsection shall, after notice and hearing, be fined not more than $100.00 by the Local Union in which his travel card is deposited.

"(j) A Building Trades journeyman member who has deposited his travel card in a Local Union, and who desires to travel to another Local Union in search of employment, or to return to his home Local Union, must apply for his travel card to the Local Union Business Manager, or officer or agent designated by the Business Manager to release travel cards or, if there is no Business Manager, then to the Local Union Business Agent, or the officer or agent designated by the Business Agent to release such cards.

"(k) Upon payment of all travel card dues owing to such Local Union, including such dues for the month in which release occurs, and upon payment of any fines lawfully levied by such Local Union, and all dues, assessments and financial obligations due to his home Local Union, such authorized officer or agent shall release to him his travel card by signing the same and securing the signature of such member thereon. Such officer or agent shall, upon releasing such travel card, and in such manner and within such time and on such forms as the General President shall prescribe, give, or cause to be given, [1,829] notice of release to the home Local Union of such member. The date of release shall be specified on the travel card.

"(l)——

Q. Mr. Steska, would you now turn without reading all the further details to the provisions concerning transfer cards? A. There's only a little bit to finish this and I think it's important.

Q. All right, go ahead. A. "Travel dues paid by a member shall be given credit by a sister affiliated Local Union during the currency of the travel dues period, upon presentation of a valid travel dues receipt.

"(m) Notwithstanding any other provision of this section, a Local Union may refuse to accept a travel card during a strike or lockout involving such Local Union, or if such card has been altered or defaced. Notwithstanding any other provision of this section, where Local Unions have an established custom or practice or by mutual agreement or consent permit the members of their respective Local Unions to work in each other's territory without the necessity of the issuance and depositing of travel cards, the General President may, in his discretion, waive the applications of this Constitution dealing with travel cards as they may apply to such Local Union or Local Unions. The General President may [1,830] direct said Local Union to abide by and carry out said established custom or practice, or mutual agreement or consent, to permit the members to work in each other's respective jurisdiction without the issuance or depositing of a travel card."

I can go on, but that was—a continuation——

Q. The part about transfer cards. A. This is Section 181. "(a) There shall be a card known as a transfer card issued to journeyman members of the United Association. When transfer cards are issued, they must specify the type of membership, whether Building and Construction Trades, Metal Trades, or Combination Local Union, and if a Combination Local Union, the transfer card shall state in what branch the member was affiliated, whether

Building and Construction Trades or Metal Trades, and state date of initiation and/or reinstatement by which Local Union. A journeyman member shall be entitled to deposit his transfer card only in a Local Union having trade jurisdiction over the craft in which he is qualified. A transfer card issued:

"(1) To a journeyman holding a membership in a Building and Construction Trades Local Union can be deposited in a Building and Construction Trades Local Union, a Metal Trades Local Union, or a Combination Local Union.

"(2) To a journeyman member of a Combination Local Union affiliated with a Building and Construction Trades branch [1,831] of a Combination Local Union may be deposited by a journeyman member in a Building and Construction Trades Local Union, or in a Metal Trades Local Union, or in a Combination Local Union.

"(3) To a journeyman member of a Metal Trades Local Union or a Metal Trades journeyman member of a Combination Local Union can only be deposited in a sister Metal Trades Local Union or in the Metal Trades branch of a Combination Local Union, and cannot be deposited in a Building and Construction Trades Local Union.

"(b) Transfer cards shall be in such form as the General President shall prescribe and shall be furnished by the General Office. Transfer cards shall be issued by the Financial Secretary of the Local Union only to journeymen members who have completed two calendar years of membership in the United Association immediately prior to the date of issuance.

"(c) A journeyman member requesting a transfer card must file a signed statement with the Local Union satisfactorily showing that he is permanently changing and moving his domicile and residence to the territorial jurisdiction or area of the Local Union to which he desires to transfer his membership.

"(d) No transfer card shall be issued to a journeyman member unless also he has had a valid travel card on file in the Local Union to which he wishes to transfer for at least one year prior to his application for the transfer card."

[1,832] Q. Is that sufficient reading to that point or is there something else significant? A. Well, I can go on. It's up to the Court.

Q. In other words, he cannot get a transfer into the Union unless he has a travel card on deposit for a year, is that right? A. That's correct.

Q. Now, sir, did you have a conversation with Mr. Craig concerning travel cards? A. I did.

Q. Do you recall where it was? A. It was in our office.

Q. And when it was? A. It was the same time we talked about the dues checkoff system.

Q. And what did Mr. Craig tell you concerning travel cards? A. He told us we shouldn't take any travel cards, it had been our custom anyway, as far as I know this Local has never taken any travel cards.

Mr. Riddle: I object to that as not being responsive and ask it be stricken and the jury instructed to disregard it.

The Court: All right, I'll sustain the objection. [1,833] The jury will disregard the answer.

Mr. Steska, just answer the question and then if there's some explanation necessary, I'm sure Mr. Randall will elicit it on proper interrogation.

Q. (By Mr. Randall) What did Mr. Craig tell you concerning travel cards? A. He told us not to take travel cards.

Q. Did he tell you why? A. Yes, he told us that if we took the travel card we were again opening the door for potential membership.

Q. Now, who prepared the LM-2 forms for the Labor Department for your Local A. They were prepared by Mr. Carroll Shelton on the auditing and Mr. Harry Craig and Jack Wiley of the firm of Wiley, Craig, Armbruster & Wilburn.

Q. Now, Mr. Steska, who owns the building down there where the Local has its offices? A. The Welfare Department owns the building.

Q. And does the Local pay rent to the Welfare Department? A. Yes, sir.

Q. Does the Fund, the Voluntary Fund pay rent to the Welfare Department? A. Yes, sir, it does.

Q. Was a meeting of the Fund held on June 12th of this [1,834] year?

Mr. Riddle: I want to object to that for the same reasons we have indicated before. This is calling for a conclusion. It's suggestive. He can state what type of meeting and who was there but when he characterizes it as that, I think he is suggesting an answer.

The Court: Oh, I'm going to overrule the objection.

Q. (By Mr. Randall) Was a meeting held? A. Yes, sir.

Q. Were the members of the Local 562 segregated from the non-members? A. They were.

Q. And in what manner, sir? A. The Local 562 members were asked to sit on one side of the hall and the non-members of Local 562 were asked to sit on the opposite side of the hall.

Q. Approximately how many non-members were there, sir? A. I'd say well over 200, possibly 250.

Q. Was a vote taken at that time as to whether or not to continue the Fund? A. Yes, sir.

Q. And what was the vote? A. The vote was 743 to continue the Fund and 5 not to continue the Fund.

[1,835] Mr. Randall: You may inquire.

Your Honor, I think maybe—pardon me, I'm not sure I offered Exhibit NN.

The Court: All the exhibits have been received but one, which is from the United Association, and Mr. Riddle asked to look at that. I don't know the number of it. I don't know which exhibit that is.

Mr. Nangle: II.

The Court: Do you have any objection to that exhibit?

The Witness: I think you asked me to take it off of there.

The Court: Well, right, keep it segregated.

Mr. Riddle: Your Honor, I would like to withhold until I have a chance to look at it during the noon hour.

The Court: All right, everything but II will be received, in order to give them an opportunity to examine it.

(Whereupon Defendant Union Local 562's Exhibits NN and OO were received in evidence.)

Cross-Examination.

By Mr. Riddle:

Q. Sir, you have testified as to a number of meetings of a group of pipefitters that according to your testimony were not regular meetings of Local 562? A. Yes, sir, that's correct.

[1,836] Q. Did you attend all such meetings? A. Yes, sir.

Q. Were you an officer of this group? A. No, sir, I was not.

Q. Sir, were any minutes ever kept of these meetings? A. Not that I know of. I would say no, with the possibility of the one on May 15, 1966.

Q. May 15, 1966? A. That is the only one I'm familiar with.

Q. Well, sir, was anybody appointed recording secretary or anybody appointed to keep notes of what transpired at these meetings? A. Not that I know of.

Q. Well, how were they conducted, by any particular rule? A. Well, the meeting was chaired by the Director of the Voluntary Fund. At that particular time it was Mr. Lawler.

Q. All right. This so-called group didn't have any by-laws? A. No, sir.

Q. Never kept any minutes? A. With the exception of the one. That's the only set of minutes that I know of.

Q. And nobody ever took any notes of what was happening at any of these meetings as far as you know? [1,837] A. Not that I know of.

Q. Sir, I want to direct your attention to the events of 1962, and particularly to a meeting or meetings relating to the raising of funds. Do you remember referring to them in your direct testimony? A. Yes, sir.

Q. Do you remember a discussion or series of discussions along about the fall of 1962 in which the Union was having some financial difficulties? A. Yes, sir.

Q. I believe you said that at that time the members were paying 50 cents a day assessment? A. That's right.

Q. And that they were also paying an additional amount for a Political Fund? A. That's correct.

Q. How much was the additional amount? A. Fifty cents.

Q. So they paid the same amount for one purpose as they paid for the other? A. Yes, sir.

Q. Now, this fifty cents was a flat figure. It wasn't tied into a—into the number of hours worked, for example, if you worked ten hours it was still fifty cents? [1,838] A. No, sir, it wasn't. It was based on an 8-hour working day.

Q. All right. If it was more than eight hours, why, at this time it would be a little bit more than fifty cents? A. It increased, yes, sir.

Q. Now, the amount that was paid into the "Voluntary Fund" or into the Political Fund at that time, was that increased above fifty cents, if there was a 10-hour day? A. I believe it was, yes, sir.

Q. Exactly the way the dues were, the assessments? A. The best of my recollection they were both the same.

Q. The formula was precisely the same, wasn't it? A. Yes, sir.

Q. Now, at that time every person on the job paid this fifty cents for political purposes and he also paid the fifty cents for an 8-hour day for Union purposes? A. In 1962?

Q. Yes. A. Yes, sir.

Q. And this was collected out on the job? A. Yes, some of it. Some of it was brought directly into the Union hall.

Q. But most of the collections were out on the job by stewards or foremen? [1,839] A. The majority of them, yes, sir.

Q. Well, about 95 per cent of them, wouldn't you say? A. Well, I wouldn't give any percentage but it was collected or contributed both ways, on the job and in the Union hall.

Q. Now, at that time was there a separate bank account used for the money that was pulled into the Political Fund? A. Yes, sir.

Q. Who was in charge of that bank account if you recall? A. 1962 it would have been Mr. Lawler.

Q. All right, now, if I recall your reference to the minutes, I will ask you if there was a discussion that you recall independently of the minutes that some of the people out on the job were chiseling on the payment of their dues and on the payment into this Political Fund? A. In 1962?

Q. Yes. A. There not only was a discussion, it is part of the minutes right there. It was brought up by the Executive Board.

Q. That people out on the job were chiseling on both payments? A. That was a figure of speech used by the Executive Board, that's correct.

Q. Well, now, what does chiseling mean to you if you [1,840] refer to it as a figure of speech? A. The Executive Board at that time, if you let me read the Executive Board——

Q. I am just asking you. You refer to chiseling as a figure of speech. What do you understand chiseling to be? A. They weren't paying the correct amount in the opinion of the Executive Board.

Q. They weren't paying all that they were obligated to pay, were they? A. That's correct.

Q. And they were chiseling on their payments to the Political Fund? A. And also to the Union.

Q. Both ways they were chiseling? A. Yes, sir.

Q. In the judgment of the Executive Board? A. That's correct.

Q. And because of this chiseling there was a desire to police or somehow institute a system that would insure a higher percentage of collection of their obligations? A. That was one of the reasons, yes, sir. Another one was to have a better bookkeeping system and to avoid these collections or contributions on the job.

Q. Well, let me see if this pretty well characterizes it. [1,841] "All of us know we have some chiselers who do not pay their rightful share, some who do not pay on their overtime. Your Executive Board does not think it is right to make some men pay every week and others pay when they feel like coming in to see the Secretary. Some come in once a month, others every three or six months, and

some once a year. This kind of a system can no longer go on."

Does this seem to reflect the attitude of the Executive Board?

A. That tells it exactly, yes, sir.

Q. Now, then, at that time a discussion was had as to what type of machinery or what type of a program could be initiated for the purpose of seeing that both funds or both amounts were paid from all members for all work that they did. A. At that time it wasn't all members, it was everybody.

Q. Yes, sir. A. That's right.

Q. Now, then, in order to insure the elimination of the chiselers, paying into both funds, it was reported to the membership that a new system was being contemplated? A. That's right.

Q. Now, then, this new system that was being contemplated, see if this refreshes your recollection:

"All of you members know,"—and by the way, were all [1,842] the members there present? A. We didn't——

Q. Well—— A. I would say there was a large body of them there, Mr. Riddle.

Q. So all the members, I assume, were told this? A. Yes, sir.

Q. "All of you members know that you have received many pay increases these past fifteen years but your dues have remained the same, although the cost of operating your Local Union has gone up many times over, and so has everything else gone up. But these many facts that we have pointed out to you members hoping that you will use sound judgment in your voting. Your Executive Board unanimously recommends that your Local Union members adopt a dues checkoff system for each journeyman and apprentice and that that amount shall be 4 per cent assessment plus dues of each member's gross pay to be paid to

the Secretary-Treasurer every week by the employer, and out of this"—that would be out of the 4 per cent gross assessment—"Out of this the Secretary-Treasurer shall keep two and a half per cent for the purpose of operating our Local Union. The Secretary-Treasurer shall turn over one and one half per cent of the 4 per cent to the Business Manager, who has charge of our Voluntary Political Educational and Legislative Fund."

[1,843] So at that time it was decided by the Board of Directors and so recommended to the membership that this was the way that the Political Fund was to be collected, and this is the way the assessments and dues were being collected, this was the decision made? A. Yes, this was patterned exactly after the Teamsters program. That is why we set it up like that.

Q. Sir, who told you to say that? Was that responsive, in response to this question? A. We're talking about this Fund. This Fund was identical to the Teamsters'.

Q. Yes, sir. Now, sir, at that time when you were thinking about this, if you recall, you had in mind to get more money into the organization and you went on ahead to say this, as I recall: "Under our present scale this should give the Secretary-Treasurer ninety-two and a half cents a day per man and your Voluntary Political, Educational, Legislative Fund fifty-five and a half cents a day per man. This will mean an increase of 48 cents a day for each member."

Now, "this 4 per cent assessment, plus dues, to take effect as soon as the Business Manager can get your Contractors Association and all others who hire our Building Trades journeymen and apprentices to agree to the checkoff system."

Now, at that time this checkoff system that you [1,844] contemplated would have had the employers to check off both the payments to the Political Fund and to the regular Secretary and Treasurer fund? A. He would have

only checked off 4 per cent, that's all. One checkoff. It would have been handled in the Union office.

Q. So I understand your testimony, you were told that that might present some legal questions? A. Yes, we were informed by Harry Craig.

Q. So in your negotiations or so in your subsequent conduct, you didn't increase your assessments 4 per cent but you increased them how much? A. Two and a half per cent.

Q. And then you set your Voluntary payments for an amount that totaled approximately 4 per cent, did you not? A. Yes, sir, it would have been very close.

Q. So the net result of what you did, even with Mr. Craig's advice, was precisely what you planned to do earlier, wasn't it? A. If we would have been permitted to do, yes, sir.

Q. Well, sir, didn't you continue then to collect that amount from each of your members for assessment? A. For assessment it was two and a half per cent, but on the Voluntary Fund that was strictly voluntary. I would have no idea if everybody paid or not. It was on a voluntary [1,845] basis.

Q. Yes, sir. Now, on that point, at what point, at what time, did this go from a forced payment and people who didn't pay were chiselers, at what point in that year, or in that week, or in that night, did it change from a chiseler's refusal to pay to a non-voluntary refusal to pay, can you tell the Court and jury that? A. The checkoff system was not put into effect until the following October, October 14, 1963. However, it had been attempted to be negotiated prior to that, and we were unsuccessful until the completion of our contract. When we finished the contract the checkoff system went into effect dated October 14, 1963.

Q. And sir, these people who were told in November of 1962 that if they didn't pay were chiselers—— A. There was no individual told, Mr. Riddle.

Q. But all of the people there were told—— A. Only by a reference.

Q. Yes. A. That some people hadn't been paying?

Q. They were told at that time if they didn't pay "we consider you chiselers"? A. Absolutely.

Q. And you say just within a matter of a few months [1,846] they were told that, "Now, you pay it now, if you want to"? A. Now, you're talking about the Voluntary Fund now?

Q. Yes, sir. A. Just prior to that you were talking about the assessments. The assessments still had to be paid. If they don't pay them a member will be suspended.

Q. Yes, sir. Sir, didn't I recall your testimony to be that the characterization of chiselers also applied to those who weren't paying into the Political Fund? A. That was a broad statement, Mr. Riddle, in that Executive Board record. I don't think we could define it at all there. It was those who weren't contributing or paying. If you will read the Executive Board report, it said, "We all know there are some chiselers." They didn't define it as far as any particular group of people. We were talking about in generality. We felt there were certain people who were not paying their rightful share.

Q. Following that, sir, had you continued with your previous plan of having the payments for the Voluntary Fund checked off by the employers, the amount that the Union received for both assessment purposes and into the Voluntary Fund would have been about the same, wouldn't it? A. Yes, sir, but we didn't continue. Harry Craig told us we couldn't, so we dropped it. We couldn't continue it at all.

[1,847] Q. What was it you discontinued? A. We discontinued the setup that we originally planned with the 4 per cent and the one and a half per cent on the Voluntary Fund, we discontinued that on the advice of Harry Craig and went strictly with the original two and a half per cent assessment plus the three dollars fifty cents per month dues. We no longer tried to negotiate anything on the Voluntary Fund basis.

Q. All right. So instead of doing that, you just continued collecting the money into the Political Fund that you now call the Voluntary Fund from the members out on the job, just like you had theretofore collected both the assessments and the political contributions, isn't this the way you continued to collect it? A. It wouldn't have been collected that way.

Q. Sir? A. Number one——

Q. Just a minute, just a minute please. Will you please answer that question? Isn't that the way you continued to collect it? A. No, we didn't continue to collect it like that. These were contributions. These were not collections. Once that thing became a separate entity there and became a Voluntary Fund, there were no more collections. I don't say that contributions [1,848] weren't accepted along the same lines, but there were no more collections made. These were all contributions. This was set up by Harry Craig as a means and a legal means to do this. At no time have we ever tried to circumvent the law along those lines.

Q. Well, now, sir, at that time wasn't it discussed, don't you recall a discussion that you couldn't use Union funds or money collected from your members for federal political contributions. A. It certainly was, absolutely it was discussed. Harry Craig was specific that we shouldn't attempt to do that, even though he had set up and it was a major factor in the Teamsters' setup, he was a little more discreet with ours. He said, "I don't believe we

ought to do it." He said, "I think you would be better off on a voluntary basis."

Q. Yes, sir. Now, then, sir, in the operation of this Fund and in the collection of it, collection of monies into it, that you call this voluntary assessment, or voluntary payment, just tell the Court and jury in what ways that differed from the previous collection of assessments off the job? A. It probably wasn't very little physical difference there.

Q. Let's just talk about any difference. Name me one [1,849] difference. A. Number one, those who didn't wish to contribute didn't contribute. That is the difference right there.

Q. No, no, sir, my question is was there any difference in the way of collecting it? A. To those who wanted to contribute, no. To those who didn't want to contribute, yes, because they didn't contribute at all then. Prior to that they all paid.

Q. Are you saying that the collections were made in exactly the same way for money into the so-called Voluntary Fund as was made for money into the regular Union account? Is your answer to that yes or no? A. Mr. Riddle, you keep going back to the collections. I would like to clear that up. If we are going to have an honest answer back and forth, let's call them what they are. They were contributions and we did. The contributions were given to people on the job. Some of the people would bring them in to the office. Sometimes the contractors would mail them in. Sometimes they would come in personally.

Mr. Riddle: If it please the Court, I would like to ask the Court to direct the witness to answer the question.

The Court: I think the question could be answered, Mr. Steska, and if it is necessary for an explanation you may make it now or have it elicited by your counsel on re-

direct [1,850] examination. So answer the question first, and I think in the interest of saving time if you will re-ask the question, why——

Q. (By Mr. Riddle) Sir, was the method of collection any different, that is collection into the so-called Voluntary Fund from the method of collection used to pick up the dues and assessments before the checkoff period? You can answer that yes or no. A. To those who wanted to contribute, no.

Q. No? A. There was no difference to those who wished to contribute.

Q. Sir——

The Court: Would you indicate to me when you think it would be a good place to stop for the lunch hour?

Mr. Riddle: This would be all right at this point.

The Court: Members of the Jury, we will recess for lunch until 2:00 o'clock. Bear in mind the admonition I have given heretofore.

(Thereupon at 12:40 p. m. court was recessed for lunch until 2:00 o'clock p. m.)

Tuesday, September 17, 1968.
Afternoon Session.

EDWARD M. STESKA,

[1,851] recalled, having previously been sworn, testified further on cross-examination as follows:

Q. Sir, to return to the meeting or the situation that existed in the latter part of——

The Court: Just a minute, Mr. Riddle, have you had a chance to look at II during the lunch hour?

Mr. Riddle: I have not, Your Honor.

The Court: Well, I wish you would so I can keep the record.

Mr. Riddle: Well, we will take a look at that at recess.

The Court: Fine.

Q. (By Mr. Riddle) Sir, I want to address your attention to the amount of additional money that the Union was considering raising and the advisability of raising in the fall, late fall or early winter of 1962. As I recall your testimony you, up until that time, you were getting fifty cents from your regular members a day, and you were getting fifty cents a day for the Political Fund? A. That's right.

Q. Now, then, for your out-of-towners, you were getting fifty cents a day assessment and fifty cents a day in the Political Fund from them? A. That's right.

[1,852] Q. And do I recall your testimony to be that you wanted to get, and first I want to direct your attention to your regular members, the proposed increase at that time would raise that from one dollar a day up to what figure? A. It would have been approximately a dollar fifty cents.

Q. A dollar and fifty cents? A. Total, yes, sir.

Q. Total, and at that time did you make a decision as to what you wanted to get from the out-of-towners per day? Would that be the same thing, a dollar fifty cents? A. We didn't make the decision. That was done at a meeting.

Q. Well, at the meeting was that decided, to get that amount from the outsiders, one dollar fifty cents a day? A. At a Voluntary Fund meeting it was, back in the fall of 1962.

Q. Yes, so I can keep the years straight. Now, at this meeting that you referred to as a Voluntary Fund meeting, that didn't occur until after the 1st of January, did

it? A. I believe it would have been in December. I don't recall the exact date.

Q. All right. Well, in order to get it cleared, before you got some advice from counsel—— A. That was in November.

[1,853] Q. In November, what were you planning to do with the out-of-towners? A. Everything was going to be the same. It was going to be 4 per cent across the board for everybody.

Q. So that would be a dollar and a half from out-of-towners and a dollar and a half for the regular members? A. Well, no, if we would have had it on the 4 per cent it would have been on a percentage basis of their gross pay, so that could have varied.

Q. Yes, but it would have been approximately a dollar and a half? A. Based on the wage rates at that time it would have been fairly close, yes, sir.

Q. Now, you say that something happened that caused you to change your approach to the money you received from out-of-towners and you got some advice from your counsel, Mr. Craig. Now, what was that advice? A. That we didn't accept anything from anyone other than Local 562 members into the Union.

Q. And did he tell you why you shouldn't? A. Yes, he told us that if we did, according to the law, that we could have the Government declare that we would have to take anybody that we accepted money from into the Union.

Q. All right, sir. So you decided then not to take [1,854] anything, no assessment at all against the out-of-towners? A. That's correct.

Q. Now, then, in January of 1963 what did the out-of-towners begin to pay into the Fund? A. You've got the chart right there.

Q. One on the right? A. I believe they voted on it at that time to increase it to $2.00 a day.

Q. Talking about January 1 of '63?

The Court: Hold it up so he can see it.

A. January 1 of '63 we went to a dollar fifty cents a day.

Q. A dollar fifty cents a day for the out-of-towners? A. That's correct.

Q. That is the same amount that you had previously decided to assess them? A. Well, it would have been on a percentage basis but it would have came out fairly close.

Q. All right. The next thing that you did, as I recall from your testimony, is that you, instead of getting a dollar and fifty cents a day as assessment from your own members, you placed that at what rate? That is—— A. One dollar per day.

Q. But that didn't—— [1,855] A. You're talking about the Voluntary Fund now?

Q. No, I'm talking about the regular assessment. A. It stayed at fifty cents per day.

Q. Fifty cents per day? A. That's right.

Q. Until you got the strike settled and the checkoff system began? A. Began on October the 14th, but prio to that we didn't know when we would get the the checkoff because we anticipated putting it in immediately when it was voted on by the membership on December 12.

Q. Yes, sir, so for a period of time here, from January 1, '63 until October the 1st of '63, the out-of-towners were paying a dollar and a half total and your members were paying fifty cents? A. Well, by that time, though—that is 1963 now?

Q. Yes. A. By that time we had gone to the voluntary contributions and at that point they were contributing it to the Voluntary Fund, the $2.00 per day, or dollar fifty cents per day.

Q. Now, the amount of money that wound up in the latter part of 1963 from the out-of-towners and from the regular members totaled exactly the same thing, didn't it? A. It would have been fairly close, yes, sir.

[1,856] Q. Now, then, it continued at that rate until January 1 of 1966? A. That's right.

Q. And at that time the amount that you got from the out-of-towners, total amount, and the amount you got from your regular members continued at the same rate? A. In 1966?

Q. Yes. January 1, 1966. A. January 1, 1966, the assessments were raised to three and three-quarters per cent, I believe, at that time.

Q. But—— A. That is on Local 562 members only.

Q. So the increase there was from a dollar to a dollar and a half for assessments? A. Well, depending again on where they were working, yes, sir.

Q. But it could vary a few pennies? A. By that time it was on a percentage basis and it would have been a percentage of whatever their gross pay would have been at that time, in whatever zone they were working in.

Q. And at the same time their contributions were decreased fifty cents? A. Yes, sir, it was voted on at a Voluntary Fund meeting to decrease it.

[1,857] Q. So, that they continued to pay $2.00 a day? A. Yes, sir, the contributions are still $2.00 a day, it never changed.

Q. And this is the same amount that the out-of-towners have paid consistently since October 15, '63? A. Yes, that is the one I mean had never changed. The assessments to our members have changed because the percentage would be on gross pay depending on the wage scale. It would necessarily go up.

Q. Yes, sir. Now, sir, had your original plan, the one that you developed in November of 1962, gone into effect,

that is, the one where the assessment was 4 per cent and all come into the Union, had that gone into effect, how would the total monies received and paid by out-of-towners and in-towners compare with what it actually amounted to in practice? A. I would say if that had gone into effect the so-called out-of-towners would have been paying considerably more than what they're paying right now, the $2.00 a day, because everybody would have been on a percentage basis then. If that had continued on to this time, the $2.00 would have been considerably more for out-of-towners than it is right now.

Q. How much more for out-of-towners? A. Well, you'll have to take the chart there. It's marked off there now. [1,858] Q. Well, this figure here for out of towners would have gone up over $2.00 a day? A. Yes, sir.

Q. Because of wage increases? A. That's correct, and everything being on a percentage basis, it would have been risen.

Q. And this figure right here, on regular assessments, would have gone up? A. Yes, it would have gone up proportionately all the way through here.

Q. So this line would have been exactly parallel for the line that appears here for out-of-towners because of wage increase? A. Well, there would have been no distinction of out-of-towners or in-towners. They would have been all the same. Any employee working in our jurisdiction would have paid identically the same amount.

Q. But if this increased above $2.00, went to $2.10, on the same date, the line over here would have gone up the same percentage, wouldn't it? A. Yes, sir, because there would have been no difference.

Q. Yes, sir. A. Everybody would have been the same.

Q. And that is what you had in mind in November and [1,859] December of '62, isn't it, that everybody that worked on your jobs would pay the same amount of

money? A. We had that in mind in November of 1962 until Harry told us that we couldn't do it, that even though the Teamsters proved to the court they could do it, we could not do it, he didn't advise it.

Q. Now, sir, when the monies were received and when they came in to both funds, I am wondering if you know how the money that was spent, that came into the so-called Voluntary Fund, do you know how it was spent, for what purposes? A. For exactly what the authorization called for, would be political, legislative, charitable.

Q. Yes, sir. Sir, can you see this exhibit? A. I can see the exhibit but I couldn't make out those figures. I've been welding for too many years. You'll have to get it up a little closer.

Q. Well, with reference to your accountant's report on the use of the money, I call your attention to the civic and charitable contributions which total $106,000, and based upon your By-Laws and Constitution, do you know of any reason why any of these expenditures could not have been paid out of your regular dues, out of your regular money, the money that your Secretary-Treasurer writes checks on? A. Yes, sir, I do.

[1,860] Q. Some of these? A. Some of those could have been paid out. The way the Taft-Hartley and Landrum-Griffith Laws are set up at the present time, Harry said we could not participate on a national level without a risk of having some problems. That was the reason he wanted to go to the Voluntary Fund.

Q. I'm talking about civic and charitable contributions paid out of this Fund, for hospitals. I'm not talking about any of these other columns. I'm just talking about the civic and charitable contributions. A. Certainly some of those could have been paid out of there and the Union, if you check the Union's records, and you do have the Union's records, you will find the Union has contributed to hospitals and various charities.

Q. And the contributions were for the same purposes that appear in this column? A. For those two items, yes, sir, charitable and various other activities that the Union is permitted to participate in, they have and will probably continue to participate in.

Q. Much as the Fund did for these $106,000? A. Well, I don't know what scale it would participate in but the Union does contribute to charity and many other things that they are permitted to contribute to.

Q. Now, sir, this aid to members, $10,106.34, do you [1,861] know what part of that was used to pay people or members for strike benefits? A. I don't think anything was paid for strike benefits out of that Fund because I don't believe it would be permitted the way its set up. It would have been for some charitable——

Q. Are you saying you don't know what this Aid to Members column was for? A. I don't know what it was used for but I do know members received aid during the period of time that we were on strike, but not as a strike benefit, no, sir.

Q. Well, now, is there any reason why money that went for the aid of members could not have been paid out of your regular Union funds? A. It was possible but there was no strike benefits set up by the Union.

Q. My question, sir, do you know of any reason, you are acquainted with the By-Laws and Constitution, why monies paid to aid to members could not have been paid out—— A. Yes, sir, they could have been paid as aid. It would have to be definitely stated to be strike benefits and we paid those strike benefits.

Q. And if your auditor said these were strike benefits you differ with him? A. I certainly do.

[1,862] Q. Calling your attention to the column over here, Recreation Center, are you familiar with that project? A. You're referring to the one in Clarksville?

Q. Yes. A. Yes, sir.

Q. Sir, do you know of any reason why funds that went into that project could not have been paid out of the regular money into the Union treasury, from the Union treasury? A. Yes, sir, because it could very well be at some of the facilities that would be installed there and have been installed that there could very well be candidates who would be on a national level, such as senators, congressmen, could very well have been attending a political gathering there and it was much better to have it set up entirely separate from the Union.

Q. As a Political Fund? A. It would have been paid out of the Political Fund. It wasn't the Political Fund. The Political Fund would have been in a position to build such a facility.

Q. Sir, do you know why it was that a corporation, a separate corporation, was set up to receive the funds and money that built the Recreation Center? A. No, sir, I don't.

Q. Did you know that a separate corporation was set up? [1,863] A. Yes, sir, I knew that there was a separate corporation set up.

Q. And, sir, do you know whether or not there is anything in your Constitution and By-Laws that prohibits your Union from its regular funds from setting up such a recreation center by the use of a separate corporation? A. We have a recreation—two recreation centers being developed right now that were handled through the Union, retirement, recreation, convalescent, we have got two very big projects we're working on right now.

Q. Just the same as this? A. No, it wouldn't be identical to that because like I told you before, could very well be, going to get a lot of political activity, and it was better to set that aside strictly for political activity.

Q. Sir, were you in on the decision to set this aside for political activity? A. No, sir, that was a decision made by the Director of the Voluntary Fund.

Q. Sir, with respect to these administrative costs that your accountant talked about, can you imagine any administrative costs for handling Union affairs that couldn't be paid out of the Union funds? A. Couldn't pay the Union funds if we're going to have [1,864] a political organization. It would be impossible to pay the salaries for the administration of a political activity out of the Union funds.

Q. Are you talking about anything other than salaries for a person who is engaged in politics? A. No.

Q. Anything else, any other expenses that you can think of? A. I would say any administration costs that would be incurred in handling that Voluntary Political, Educational, Welfare and Defense Fund, any administrative costs should be confined directly to the Fund itself. It should have nothing to do with the Union funds at all.

Q. Now, sir, this column Political, do you know any reason why the political monies couldn't be paid out of the regular Union dues? A. I certainly do. There again we would be prohibited by both the—I am sure the Taft-Hartley Act and the Landrum-Griffith Act from contributing to candidate on a national level.

Q. This is the only column of the totals that in your opinion would be illegal, the Political column? A. Well, Mr. Riddle, I'm no attorney, I don't know whether it would be illegal or not. I do know that we were not [1,865] going to take a chance of having any discussion of whether they were legal or illegal. We just didn't do it.

Q. Sir, at the time that you talked to Mr. Craig, in order to make it entirely clear for the record and for the Court and jury, will you tell us on how many occasions you talked to him? A. I don't really know. We talked to

him—he's been retained by the Union, I guess, twenty some-odd years, and many times we would have discussions with him two or three times a week.

Q. All right, sir. A. And I have no idea how many times we talked to him.

Q. All right, sir, let me be more specific in my question. How many times have you talked to him and sought his advice about the creation of this so-called Voluntary Political Fund? A. I would say several. I don't really know how many. We have discussed this, he was worried, he got us worried.

Q. Sir, if you would just answer the question.

The Court: Just answer the question.

A. I don't honestly know, Your Honor, how many times.

The Court: Well, the question was how many times you talked to Craig about the Voluntary Fund.

Wasn't that the question?

Mr. Riddle: That is correct, Your Honor.

[1,866] A. I would say several times. I don't know specifically.

The Court: How many do you mean by "several"?

The Witness: I would say more than one. Could be as many as four or five times.

Q. (By Mr. Riddle) All right, do you remember the first time you talked to him about it? A. Yes, it was right about the time the Executive Board decided that they wished to do something to put this on more sound business-like basis.

Q. This would have been in November or December of 1962? A. Well, it would have been in probably November, more so, because December we had already made our decision what to do, so it would have been in the area of November.

Q. All right. Now, then, will you tell us specifically what advice Mr. Craig gave you at that time? A. Now, can we take this in two steps, because that's how we got into this thing?

Q. No, just tell us what Mr. Craig's advice was to you at that time. A. All right. At the first meeting that we had we had told them, that we were——

Q. No, no, what advice he gave you. A. Well, I can't give you the advice until I tell you what I—what we had asked him to do.

[1,867] Q. Sir, the question is, what is relevant here, if you would, please, just state what advice he gave you? A. Well, I'll try to answer it but I'll have to answer it this way: We wanted to go——

Q. No, just a minute, please.

The Court: You asked for conversation with your lawyer.

The Witness: Yes, sir.

The Court: After you had the conversation with him he gave you some advice. Just tell what advice he gave you.

The Witness: Well, Your Honor, that is two steps. Shall I go all through it? We wanted to go to the 4 per cent.

The Court: I know you testified to all that. Just answer that question. You talked to him and then he asked you —he gave you some advice. Now, answer the question by telling—— A. Let's take the first November meeting that we had of the Executive Board.

Q. (By Mr. Riddle) All right. A. We had sought his advice on setting up the 4 per cent.

Q. Just a minute, please, sir. Just state what advice he gave you, about whatever the subject matter was. A. The first advice he gave us, that we could set it up be-

cause he had been involved in the Teamsters. He said it [1,868] looked fine to him.

Q. All right, now, sir, now, then, he said you could set it up. What were you talking about, set up what? A. Well, that's what I was getting to. We wanted to set up the 4 percent, checkoff system.

Q. All right, sir, and is that the only advice he gave you then, that that would be all right? A. Well, we discussed other things but that was mainly what the advice was, that he thought at the time it would be permissible.

Q. All right. So that's the first time. A. Yes, sir.

Q. Then did you talk to him again shortly thereafter and seek his advice further? A. We did. I believe he called us shortly thereafter.

Q. All right. Who did he talk to when he called? A. Myself and Mr. Lawler.

Q. Both of you on the phone? A. I don't know whether we were on jointly, but we could have been because we have a joint system in there.

Q. Sir, is it your testimony that you heard him talk to him on the phone, knew it was his voice? A. Yes, sir.

Q. All right, sir, what did he tell you on the telephone? [1,869] A. He told "Eddy"—he said, "Eddy"——

Q. He told who? A. Me.

Q. All right. A. He said, "I've given this a lot of thought and I would like to discuss this further." He said, "My partner and I, Jack Wiley, are of the opinion that you shouldn't do it the way I had originally advised you."

Q. That is on the 4 per cent assessment across the board? A. That is on the 4 per cent, although he said, "I think it's all right. I would not advise you to do it that way." Then he went on to tell us why.

Q. All right. Number one, he said, "Don't do it that way." All right, and then he told you why. Now, what were his reasons? A. All right. He said, "Number one, if you take assessments from other than members of Local 562, I'm very much afraid that you could possibly destroy your union because you're going to have times when you're going to be in a construction boom and you would have people in here from all over the country and could very well be that the Government would force you to take all these people in as members."

Q. All right, sir. A. "And it would very much endanger the welfare and the [1,870] livelihood of your older members."

Q. All right, sir. That is the advice he gave you with respect to the out-of-towners? A. As far as the assessment was concerned, yes, sir.

Q. All right. What else did he tell you if anything? A. He said, "I would further recommend that we, even with the political, that we set that completely separate from the Union."

Q. The political separate? A. From the Voluntary Fund.

Q. All right. A. Which would be the other branch, legislative, charitable.

Q. All right. He said, "Set it separate from the Union?" A. He said he thought it would be much better to do that completely separately and put that on a voluntary basis.

Q. He said to set it separately and to put it on a voluntary basis? A. That's right.

Q. All right, sir. What else did he tell you? A. He said we should go further and have authorization cards printed and do not accept any contributions from anyone who does not sign an authorization card.

Q. All right. Next he said to have authorization cards [1,871] printed? A. Yes, sir.

Q. And not to accept contributions unless someone had signed them? A. Indicating that it was strictly voluntary on their part, yes, sir.

Q. What else did he tell you, if anything? A. I don't know whether he mentioned drafting the correct wording or not at that time but he eventually drafted the wording that appears on the card. He might have discussed getting the card together or something like that at the time but he said, "We'll have to get together and get this card,"——

Q. Let's forget about the drafting of the card right now. Is there any other advice that he gave you on this occasion? A. Yes, I believe he mentioned about the travel cards.

Q. All right. What did he tell you about the travel cards? A. He said, "Under those circumstances should you change from the policy that the Union has been following for years," he says, "don't accept any travel cards."

Q. Don't accept any travel cards? A. That's right, which had been the policy for years anyway. I don't remember anybody ever having a travel card.

[1,872] Q. In your Union? A. That's right.

Q. Did he tell you why not to accept travel cards? A. There again he says, "Even though your Constitution may have certain sections in there pertaining to that," he says, "according to the law," he says, "within thirty days, if the Government so desired, they could force anybody with a travel card into the Union."

Q. All right, sir. So you would knock out the travel cards? A. Well, we never knocked it out because we never had it anyway.

Q. His advice to you was if you kept the travel cards out then you wouldn't run into any difficulty with the Government or some portion of the Government? A. Well, he said, "There's a possibility with our Union security laws in the contract that within thirty days the people would have to be admitted into the Union."

Q. All right, sir. Now, then, did he give you any other advice on that occasion? A. I don't recall any at that time.

Q. All right, sir. Now, what is the next time that you talked to him and received his counsel or advice, if you did? A. Oh, it might have been prior to the December the 12th [1,873] meeting because we had to get together and he had to—I believe he even drafted the letter, if I'm not mistaken, that we sent out to the members notifying them of the December the 12th meeting, which pertained to the voting on the two and a half per cent assessment.

Q. I'm not talking about what he may have done, I'm asking you what advice he gave you, additionally, or in addition to what you have just testified to? A. Well, that would be about it.

Q. All right. Did I understand your testimony is he drafted a letter for you, as you recall? A. As I recall he drafted that letter, yes, sir.

Q. And he drafted this Voluntary card? A. That's correct, and also the authorization card that we use now in the Union on the checkoff. Everybody has to sign an authorization card for his employer before the employer is permitted to deduct anything from his pay.

Q. So he drafted those two cards? A. Yes, sir.

Q. Now, then, did he give you any other advice at all with respect to this matter? A. I don't know. This could have been a continuing thing because we went right from there and we got into negotiations——

[1,874] Q. No, my question, sir, is with respect to this matter, with respect to the establishment of the so-called Voluntary Political Fund, whether or not he gave you any other advice? A. I don't recall any right now.

Q. Well, I would like for you to be very certain about that. If there is—— A. Well, it's pretty hard to be certain, because we, like I say, he's been our attorney for twenty some-odd years and we could have discussed it even as part of discussions about other things, because we were trying to get the checkoff then in after the December the 12th meeting. The Business Manager was meeting with the Mechanical Contractors Association and he was unable to get it in at that time, and it became a bargaining issue in June. In fact, we had to go on strike over that and several economic issues in the contract, but he had the meeting, and we could very well have discussed many things with Harry Craig.

Q. But about this particular subject matter do you recall any additional advice? A. I can't recall it right now.

Q. Are you reasonably certain that there was none that you acted upon? A. No, I wouldn't be certain though, but I can't recall it right now.

[1,875] Q. With respect to the Chesebrough-Pond construction job over in Jefferson City, are you familiar with that project? A. A little, yes, sir.

Q. Did you participate any in it? A. No, sir.

Q. Were you ever over at Jefferson City? A. Oh, yes, sir.

Q. Did you ever meet with the business manager of that local over there? A. Yes, sir.

Q. Is he also the president of that local? A. I don't know what his position is with the Union.

Q. What was the subject matter or the reason for you to meet with him? A. It was a discussion about welfare benefits, I believe. In fact, they had their wives, we went

up there to have dinner with them, and we discussed the welfare provisions and that, because we have had a number of their—it's Local 279—people working in our area for a long time, and they were becoming eligible for benefits.

Q. Yes, sir, but what I'm asking you to tell the Court and jury is, what was the discussion about? You said welfare benefits. What else if anything? A. I don't recall anything at that—it was at Ramada [1,876] Inn, as I recall it.

Q. Who else was there besides you and he? A. Oh, like I said, it was the membership and their wives from Local 279.

Q. Who was there with you from Local 562? A. Ed Henry, the Director of the Welfare Fund.

Q. Who else? A. Mr. Lawler, business manager, I believe, was there.

Q. Who else? A. I believe Virgil Walsh, the business representative who has the area up through there, member of Local 562.

Q. Who else? A. Sam Latta from Local 581, business manager, 581.

Q. No, I'm talking from your local now. A. Oh, well, these were all at the head table there.

Q. All right. Was Mr. Callanan there? A. Yes, I believe he was.

Q. All right. Now, was a discussion had at that meeting, on the day of this meeting, between you and your counterparts, that is, you and Mr. Lawler, Mr. Callanan, Mr. Henry and the others, about the working conditions on the job there at Chesebrough-Pond? A. No, I had no discussion with the Chesebrough-Pond job as to working conditions.

[1,877] Q. Did you have a discussion with them, or was a discussion had in your presence by other members of

your local and representatives of that local about the payment of $2.00 a day? A. Not to——

Q. Into your Fund? A. I don't recall in my presence ever having any discussion there.

Q. Well, did you become aware of an understanding or an agreement that the two dollar a day would not be paid by the Jefferson City members? A. Yes, sir.

Q. Working on that job? A. I recall it.

Q. You became aware of that? A. Yes, sir.

Q. Who told you that? A. Either the business representative who had the area, Virgil Walsh, or the business manager, Mr. Lawler.

Q. Either Mr. Walsh or Mr. Lawler told you that? A. That's right.

Q. At this time who was Director of the so-called Voluntary Political Fund? A. What was the date?

[1,878] Q. I believe that was in 1962, as I recall the testimony. A. Not 1966. Mr. Callanan would have been the Director of the Voluntary Fund in 1966.

Q. Would Mr. Lawler have had any position with the Voluntary Fund at that time? A. At that time, no, sir. he would have been the business manager of the local.

Q. Did Mr. Lawler tell you that he had made the agreement that the Jefferson City people would not pay into this Fund? A. He didn't say that he had made the agreement.

Q. All right. What did he tell you? A. I don't recall it word for word but it's possible that he said——

Q. No, I'm not asking what is possible. I want you to tell the Court and jury to the best of your recollection what he told you about the agreement. A. I believe the only discussion we had was the Jefferson City local would not contribute anything into our Fund.

Q. For that job? A. For that job.

Q. All right. Were you told why? A. Well, I recall——

[1,879] Q. No, what you were told. A. No.

Q. You weren't told why? A. No.

Q. Do you know why? A. Well, it will take a little explanation because they also wanted the welfare and pension benefits and everything to stay into Local 279.

Q. Yes, sir. And at that time we had some problems even over the jurisdiction of that particular job, and it was all straightened out by our General President that Local 562 would retain its jurisdiction over comparable work of which Chesebrough-Pond was that type of a job and——

Q. And as a part of the understanding agreement that the two dollar per day per man over there would not be collected, wasn't that a part of the agreement? A. That was the only part of the agreement that anyone could make because the welfare and pension—all the fringe benefits that belonged to any employee has got to go into the Welfare Fund. There's no way anyone can waive that.

Q. Yes, sir, but there was a way for you to waive the two dollar a day? A. It was possible to discuss that and such an agreement, [1,880] yes, sir.

Q. And it was possible for representatives of your Union to waive that, wasn't it? A. No, sir. I don't think it was any possibility as members of the Union to do it.

Q. Well, who did do it? A. It's possible that the Director might have waived that. I wasn't at the meeting, Mr. Riddle, as I told you. I got this secondhand.

Mr. Riddle: Yes, sir.

Just one second, Your Honor.

Sir, to your knowledge, have you received any advice from any lawyer other than Mr. Harry Craig about the so-called Voluntary Political Fund? A. No, sir, I don't

think so. I could have—no, I believe Harry Craig would have been the only one that we have discussed it with.

Q. The only one, all right, sir. You are quite sure about that? A. Well, to the best of my recollection. I don't recall talking to anyone other than Harry about it.

Q. Sir, you testified something about other funds that you have, the Welfare Fund, the Pension Fund. A. Yes, sir.

[1,881] Q. Those are all under the control of the Union? A. They are under control of the Union only insofar as the Union negotiates the amounts that will be set aside for welfare benefits. As far as the control of the—and administering of the Welfare and Pension Fund, that is done by trustees who have appointed an administrator to handle that.

Q. Sir, in the past few years since this Fund was created in January of 1963, as president of the Union, have you had occasion to collect or pick up money for this Fund? A. Yes, sir.

Q. Often? A. Quite often, yes, sir. You say "collect," I didn't do any collecting. I picked up contributions, brought them in, received them sometimes at the office, many times I accepted them.

Q. As a part of your responsibility as president of the Union? A. No, sir, had nothing to do with my responsibility as president.

Q. Sir, since the adoption of this plan or this Voluntary Political Fund, and the checkoff system, would you compare the chiseling that is taking place now with what it was in 1962?

Mr. Daly: I would object to that as assuming something [1,882] not in evidence, also being argumentative.

Mr. Riddle: It is in evidence, Your Honor.

The Court: He may answer.

A. I have no way of knowing. I mean that would be impossible for me. I would say that with the checkoff system it's very unlikely that anyone wouldn't be paying his dues and assessments because it is on a mandatory basis. The employers themselves check it off each week, just like Social Security or income tax.

Q. So there is no chiseling there? A. Not any more than there would be on that income tax, if that employer makes the mistake, that would be the only way.

Q. Now, what about Anheuser-Busch, where there is no checkoff system? A. Well, that's a separate contract down there, now, that we negotiated directly with Anheuser-Busch, and there is no checkoff system with anyone down there.

Q. Are you familiar with how the collections are made there? A. I believe the steward probably handles that on the job.

Q. And that is the steward that handles that is also handling the collections into the Voluntary Fund? A. He's handling the contributions, yes, sir.

[1,883] Q. He handles all monies that comes in from members out there? A. Yes, I believe he receives it and brings it in.

Q. Have you seen the books he used, one for one fund and one for the other? A. No, sir.

Q. You have never seen them? A. No, sir.

Q. Do you know if his collection is pretty thorough in both instances? A. I would hope that it would be. I mean——

Q. That is collections into the funds, his collection for dues was pretty complete, a hundred per cent? A. I sure hope so.

Q. Well, you have never looked at his records to see? A. No, but you're talking about—I would assume if any-

body is going to take care of a job like that, it's a responsible position and I would imagine that he would do a good job.

Q. Collect all that was coming? A. Well, he would collect the contributions as they were given to him, but he would make sure that he collected the dues and assessments, yes, sir, because that would be mandatory.

Q. Do you know if he works any harder at one than he [1,884] does the other? A. I don't know. That's a question you will have to ask him. I don't know how hard he works.

Mr. Riddle: We have nothing further, Your Honor.

Mr. Randall: No redirect, Your Honor.

The Court: All right, step down.

(Witness excused.)

The Court: Will you look at II?

Mr. Riddle: Yes.

The Court: Call your next witness.

Mr. Randall: Mr. Harry Craig.

HARRY CRAIG,

being first duly sworn, testified in behalf of the defendants as follows:

Direct Examination.

By Mr. Randall:

Q. Mr. Craig, would you state your full name, please, sir? A. Harry H. Craig.

Q. Where do you live? A. I live at 4466 West Pine in the City of St. Louis.

Q. What is your occupation or profession? A. I am a lawyer.

Q. Where do you maintain your offices, sir? A. In the Buder Building on Seventh and Market Street.

[1,885] Q. Do you have a firm there? A. I do.

Q. What is the title of the firm? A. Wiley, Craig, Armbruster & Wilburn.

Q. And, sir, do you specialize in any particular area of the law? A. Yes, sir.

Q. And what area is that, sir? A. Labor law.

Q. And how long have you specialized in labor law? A. Oh, for at least twenty years.

Q. Mr. Craig, do you represent unions in this area? A. Yes, sir, I represent only unions, no employers.

Q. What are some of the unions you represent? A. Well, I represent Pipefitters Local Union No. 562; I represent Pipefitters Local Union No. 318 with headquarters in Cape Girardeau, Missouri; I represent Pipefitters Local Union No. 581 with headquarters in Hannibal, Missouri; I represent approximately sixty or seventy local unions affiliated with the International Brotherhood of Teamsters, and I represent the St. Louis Joint Council of Teamsters, which is a subordinate body of the International Union, having, oh, twenty-two or twenty-three local unions as affiliates.

I represent the Missouri-Kansas Conference of [1,886] Teamsters, with which all of the Teamster unions in Missouri and Kansas are affiliated. I represent the Illinois Conference of Teamsters with which there is affiliated virtually all of the Teamster unions in the State of Illinois outside of Cook County, or areas north of that county. I represent Local 513 of International Union of Operating Engineers. I represent the Upholsterers Unions. I represent Building Service Employees Union, and there are many that I haven't mentioned.

Q. All right, Mr. Craig, how long have you represented Pipefitters Local 562? A. For approximately twenty years.

Q. Have you been on a monthly retainer basis for twenty years with them, sir? A. For eighteen years I have been on a monthly retainer basis.

Q. Now, Mr. Craig, when did the provisions of Section 610 of Title 18 first come to your attention as an attorney? A. When Congress passed the Labor-Management Relations Act of 1947, over the veto of President Truman.

Q. What is the popular name of that Act? A. The Taft-Hartley Act.

Q. And was this 610 a part of that Act? A. Yes, in the Taft-Hartley Act it is designated as Section 304, I believe.

[1,887] Q. Now, sir, did you advise any of these unions that you represented with respect to the matter of political contribution in federal elections in connection with this statute?

Mr. Riddle: Just a minute. I object to that as being completely immaterial, advice he has given to other people.

The Court: Be sustained.

Q. (By Mr. Riddle) Mr. Craig, if I might come down to November of 1962, were you then representing Pipefitters Local 562? A. Yes, sir.

Q. And specifically what were you consulting with them about at that time, sir? A. In November of 1962, among other things, I was consulting with them concerning the establishment, maintenance and administration of a fund, the proceeds of which could legally be used for political activities, including contributions to candiates for federal offices and expenditures on their behalf.

Q. Was their contract coming to a close at that time or near that time, sir? A. Yes, it was getting close to the

time when negotiations for a new collective bargaining agreement would begin.

[1,888] Q. Before we get into that, Mr. Craig, I will hand you what has been marked as 562's Exhibit GG, which is the Constitution and By-Laws of Local 562, and ask you who wrote that document? A. I did.

Q. When did you write that, sir? A. It was sometime prior to November of 1960, probably I completed the drafting of it within two or three months prior to November of that year.

Q. Was there some occurrence that caused the necessity for writing the By-Laws and Constitution of the law? A. Yes, sir.

Q. What was that? A. The passage of the Landrum-Griffith Act in 1959, the first sentence of Title 2 of which provides specifically that every labor union must adopt a constitution and by-laws.

Q. And had 562 had a constitution and by-laws prior to that time? A. Yes, sir.

Q. Did all the unions that you represented have a constitution and by-laws at that time? A. Practically all of them.

Q. Now, does that act also contain certain specific provisions that must be incorporated in the by-laws and [1,889] constitution? A. Yes, sir.

Q. Now, coming down to November, when you were considering a new contract and consulting with 562, sir, did you have a meeting in the early part of November at some point with any of the officers or employees of Local 562? A. I did.

Q. Do you recall where that meeting occurred? A. Yes. It occurred at the offices of the Union on Pierce Avenue off of Hampton. I think it's 1242 Pierce Avenue.

Q. Do you recall who was present? A. Yes, Eddy Steska, the president of the Union, John Doc Lawler, the

business manager of the Union, John Burke, the secretary-treasurer of the Union, possibly George Seaton was there. I'm not certain about that.

Q. Was Mr. Callanan there? A. No, sir.

Q. Now, would you tell us what was said and by whom at this meeting?

Mr. Riddle: Just a minute. We object to that, Your Honor. This is far too broad a question. It calls for hearsay. I think the question should be limited to what advice he gave. All conversations that occurred other than that would be immaterial and hearsay and self-serving.

[1,890] The Court: Well, the other statements by other people present, I think would be hearsay, Mr. Randall.

Mr. Randall: Well, they're all parties to the case.

The Court: I know.

Mr. Randall: Except Mr. Burke, I believe.

All right, sir, will you tell us then what advice you gave these people with respect to this question of assessments and checkoffs and dues and that sort of thing?

A. I told them that if it was their desire and intention to establish a separate fund, which could be used for political purposes, that they could do so. I told them that they could choose between several different types of funds. I told them that they could, for example, follow the type of fund and the formula which I had previously set up for the Teamsters Union, or they could use a different system or a different formula for maintaining and administering such fund.

I told them in response to a request that the Teamsters fund, if they desired to use it, would be in my opinion a good one to use, because I was thoroughly familiar with the setting up of it, had set it up, and that it had the advantage of having been tested legally in the federal

courts and found by this court through the opinion of the late Judge Moore of this court to be permissible and legal.

In response to a request I outlined in detail the [1,891] manner in which the funds of the Teamsters had been set up and the manner in which it was operated. I told them that before they made a choice that they must understand the manner in which the Teamster fund had been set up by me and what it entailed in the way of detailed operations.

I told them that in the operational structure of the Teamsters, that contrary to the past policy of the Pipefitters, all dues from members, that is the monthly periodic dues of the labor organization, were checked off. I said to them that I knew that they were aware of what checkoff meant, but I wanted them to understand specifically with reference to this kind of operation just how checkoff had to be arranged for and how it had to work in practice.

I told them that in the Teamsters' setup the first step necessarily would have to be negotiating a new contract with employers, which contract would provide that the employers would deduct from the gross wages of each employee the monthly periodic dues of the union, and that the employer would remit the amounts deducted or checked off direct to the union, that this would have to be written into a collective bargaining agreement in order to be legal.

It would also require for its legality a card signed by each employee authorizing his employer to check dues off and send them along to the union.

[1,892] I told them that this would be one of the steps, if a checkoff system were to be adopted.

I then told them that following the negotiation of such a labor agreement, and the establishment of such a checkoff system, that the program of the Teamsters further required that each member, who was willing to do so, would have to sign another card. This card would say in effect that the member individually authorized

and directed his local union upon receipt of money checked off by employers to set aside a certain portion or amount of the total dues checked off, which amount was to be set up in a separate fund, and which amount in the separate fund was to be used exclusively for political activities which could include and did include contributions to candidates for federal office and expenditures on behalf of their campaign.

I told them that upon receipt of money checked off by employers under a labor contract that no portion of that, because that amount represented the dues structure of the union, no portion of that could be set aside and used for political activities of this nature unless individual employees signed a card authorizing and directing the union to do that, and that only the amounts represented by the individual authorizations could become a part of this separate fund to be used for political activities.

[1,893] I also told them that in the Teamsters' plan, or in any other plan that they would choose to adopt that it was absolutely essential that any money received under any authorization from any employee must be money which is not made either a condition of obtaining employment or a condition of retaining employment or a condition of union membership.

I instructed them that under no circumstances could any requisite payments made first in the nature of dues, a portion of which is later set aside under authorization, none of that money could be used if a condition of employment or continued employment or union membership depended on it.

I told them that under that system, bearing in mind that initially the collective bargaining agreement required employers to check off the periodic dues of the union, and that the dues, when received under a proper authorization card, would partially go into a separate fund, that this sort of a program would have to be care-

fully followed and if set up must be followed from beginning to end under that sort of a formula.

I told them that there were other and different forms of programs which they could legally use and we discussed a few of them. I told them, to give them an example, that if they did not wish to follow the same sort of program adopted by the Teamsters, that instead of that their organization could merely collect the monthly periodic dues and the monthly [1,894] periodic assessments of the Pipefitter Local Union, and just let that stand alone, going into the Union and the general funds of the Union, and that separately, and as an additional activity, they could solicit contributions from persons who were willing to make them, these contributions to be put into a separate fund.

I explained to them the general manner in which the top international unions, and in particular the American Federation of Labor and Congress of Industrial Unions, had established and maintained the fund which they could legally use for political activities and political purposes; further, that the International Brotherhood of Teamsters had similar and like funds, any of which could be adopted depending upon which one looked best for their organization.

Q. (By Mr. Randall). Now, sir, did you have a further meeting or another meeting with any of these people a few days later? A. I did. I did.

Q. Where was that meeting, sir? A. That meeting, likewise, was in the Union hall, or Union offices on Pierce Avenue.

Q. And how much later was that as best you recall? A. Not more than a day or two later.

Q. And what advice—who was present at that [1,895] meeting? A. The same persons.

Q. And what advice did you give them at that time, sir? A. I advised them that—and this was in response

to their request—I advised them that if, as they told me, they desired to follow the same program used by the Teamsters that we would have to review what I had said before in the way of instructions and that I would have to get busy preparing various documents and papers, including cards, to be used, to be signed by employees, and that it would be necessary for them, before they undertook this sort of a program, to submit the matter to the decision and vote of the membership of their organization.

Q. Did you have any further meetings with them concerning this subject? A. Yes.

Q. And when and where were they? A. The next meeting I had with them was on November the 25th, 1962.

Q. Where was that meeting? A. I am not certain at this time whether that meeting was held in the offices of the Union or in the offices of Morris Shenker.

Q. Who was present at that meeting? [1,896] A. Eddy Steska, John Lawler, and I am not certain whether either Mr. Seaton or Mr. Burke were present at that meeting. I don't believe Mr. Burke was there. I'm reasonably sure he wasn't. But I don't recall whether Mr. Seaton was there.

Q. Was there anyone else there that you can remember? A. Yes. I was there, of course. My law partner, Jack Wiley, and Morris Shenker was there.

Q. Was Mr. Lawler there? A. Yes, he was there.

Q. All right. Now, what advice did you give them at that time, sir? A. I advised them at that time that since our previous discussion and since their previous decision that they would like to follow the same program used by the Teamsters, that when I began preparation of the papers and documents and the outline of the manner in which this would have to be set up and maintained

and administered, that I had reached the conclusion that it would not be well for their union to use the program like the Teamsters'.

I told them that if they used such a program, including in part a checoff by employers, that the checkoff system would necessarily mean as a matter of law that the Pipefitters Local Union would be compelled, would have to admit [1,897] to membership in their organization any person whose dues were checked off.

I told them that I realized, I knew of their past policy and practice of limiting the number of their members to just that number of people that they believed they could constantly find work for, whether employment was good or whether it was slack. I knew that through the years they had never had a checkoff system. I knew that through the years they had never admitted persons to membership in numbers greater than they thought they could find work for, and I thought in view of the fact that the system used by the Teamsters would mean that they would be compelled as a matter of law to admit anyone to membership whose dues were checked off or even if not checked off, whose dues were paid, as any condition of employment, that they would increase the number of the members in their union beyond what they had always told me they didn't want to do, and I concluded that it would be much better for them from a practical standpoint to forget the program or a type of program used by the Teamsters, and instead of that permit me to draft a different form of program.

I explained to them; I told them that if they would follow the Teamsters' program and if they would decline to admit to membership all whose dues were checked off or dues paid under that kind of a program, that the receipt of the dues; [1,898] coupled with the refusal to admit to membership, would be in conflict with the Taft-Hartley Law.

I then told them that I urged them to adopt a different program and outlined the type of program I thought they should have.

Q. Before telling what you told them with respect to that program, Mr. Craig, did you give them any advice concerning a travel card fee? A. Yes. I told them that if as a condition of employment or a condition of union membership they accept a fee from pipefiitters coming from other areas working on the so-called travel card, that if they accepted the travel card fee they would also have to admit those people to membership, and I strongly urged them to decline in the future to accept any travel card fees so that they would not be compelled to admit more members than they wanted.

Q. All right, now, sir, what program did you outline to them at that time? A. I told them that it should be separated into two parts, that, number one, they should proceed with their intention when they negotiated their new labor agreement to incorporate the so-called check-off system into their new agreement, so that after the contract was executed and after the checkoff system was perfected, that the monthly periodic [1,899] dues and the monthly periodic assessments, as spelled out in the constitution of the Local Union, would be deducted by employers from the gross wages of employees and remitted direct to the Union with this exception: that no monthly periodic dues or monthy periodic assessments should be checked off for persons who were not members or were not members of Local 562, and that they should permit me to prepare a letter of instructions to employers which made it plain that the checkoff system applied only to the members of the Local Union and was not to be applied to persons not holding membership.

Q. Did you give them any advice concerning political money? A. Yes, I did.

Q. What was that advice? A. I told them that as a separate activity they should initiate a program which would enable them to solicit from their own members or from anybody else working in this jurisdiction, in the pipefitting trade, to solicit from all of those people contributions into a separate fund which would be used for a variety of purposes.

I told them that they must in soliciting, if they intended to adopt this recommended system, they must permit me to prepare a form of authorization card or agreement to the [1,900] effect that persons working in the industry would sign showing that they were making contributions to this separate function and that the contributions were willingly or voluntarily being made by them.

Q. Now, Mr. Craig, did you subsequent to that prepare such an agreement, or card? A. I did promptly, immediately.

Q. And I hand you what has been marked Local 562 Exhibit B, sir, and I will ask you if that is a copy of the card which you prepared? A. It is.

Q. Now, you said you also prepared a letter going to the employers after the contract was negotiated and so on, so forth, at some point, and I hand you what has been marked Local 562's Exhibit NN, and I will ask you if the second page of that is that letter? A. It is.

Q. And does that letter state that checkoffs shall apply only to members of Local 562? A. It does.

Q. Now, Mr. Craig, does this card, contents of this card, substantially embody your recommendations to Local 562 with respect to this fund? A. Yes, sir, it does.

[1,901] Q. Mr. Craig, I will hand you Government's Exhibit 63, 64, 65, 66, 67 and 68, and I will ask you if you participated in the preparation of those reports to the Labor Department? A. I did.

Q. And did you include the Voluntary Fund in those reports? A. No, sir.

Q. And why did you not do so? A. Because it is neither required nor is it——

Mr. Riddle: I want to object to that as being completely immaterial, Your Honor. This is calling for an opinion of this witness on a matter that is unrelated to the issues in this lawsuit, allowing him to substitute his opinion for what the Court will instruct the jury.

Mr. Randall: Your Honor, the reports are in evidence. The Government has put them in evidence.

The Court: There is no question about their having been put into evidence.

Mr. Riddle: They are.

The Court: However, I think that ultimately the determination for the jury is the very question, and so I will sustain the objection as to that.

Mr. London: May we approach the bench, Your Honor?

(Thereupon the following colloquy ensued among the [1,902] Court and counsel, at the bench, out of the hearing of the jury:)

Mr. Randall: I'd like to make an offer of proof that if the witness had been permitted to answer the question he would have stated the reason he did not include it in the reports was because it was not a fund of Local 562.

Mr. Riddle: To which we object, Your Honor, because that is the issue that is to be decided by this Court in its instructions to the jury.

The Court: I don't think that it's going to be decided by the Court in its instructions to the jury, but I think this is a fact question that must ultimately be decided by the jury. It is not the subject of expert testimony and

would be an invasion of the province of the jury, so if you object to the offer of proof——

Mr. Riddle: Yes, sir, we do, Your Honor.

The Court: Be sustained.

(Thereupon the further following proceedings were had in the presence and hearing of the jury:)

The Court: Members of the Jury, we will have our afternoon recess at this time. Please remember the admonition I have previously given you.

Be about ten minutes.

(Following a brief recess, Harry Craig resumed the [1,903] witness stand for further direct examination as follows:)

Mr. Randall: Your Honor, we again offer II.

Mr. Riddle: We have no objection.

The Court: Be received.

(Whereupon Defendant Union Local 562's Exhibit II was received in evidence.)

Mr. Randall: You may inquire.

Cross-Examination.

By Mr. Riddle:

Q. Mr. Craig, at the outset I would like to ask you this question: Have I discussed with you your testimony in this case heretofore? A. Have you, sir?

Q. Yes. A. No, you have not.

Q. You have been counsel for Local 562 for twenty years? A. Approximately twenty years.

Q. And been on a retainer for them for eighteen? A. Yes, yes, that's right.

Q. By retainer you mean they pay you so much per month or so much per year? A. So much per month.

Q. Does this include you as well as other members of your firm? [1,904] A. Yes, sir, it does.

Q. And Mr. Wiley is one of the members of that firm? A. Yes, sir.

Q. All right, sir. Sir, in connection with the advice that you gave to Mr. Steska, Mr. Lawler and who was the other one, if you did mention another one? A. Well, there was Mr. Lawler, Mr. Steska, Mr. John Burke, who is the secretary-treasurer of the Union, and Mr. George Seaton.

Q. Sir, in your advice to them did your last bit of counseling with respect to this Fund and the handling of it terminate after you had prepared the so-called Voluntary cards? A. No, sir.

Q. Have you given them advice about the Fund thereafter? A. Yes, on many occasions.

Q. Sir, did you give them any advice with respect to the actual physical collection of these funds? A. No, sir, I did not, with this exception, if I may add this: They inquired of me the manner in which these funds must be collected. I told them there were no regulations, there were no prescriptions or proscriptions on the way that they did it. I told them, for example, that these funds could be brought in individually by contributors and given to the Director of the Fund, or they could be solicited and collected [1,905] on the job while men were working by any of the men working on the job, either by rank and file workers or by job stewards or by foremen or by anyone else as far as I was concerned. I instructed them, however, that if persons solicited and collected contributions on the job, and in addition to that collected any money due to the Union in the nature of periodic dues, that those persons, although they could collect both, must turn in the dues to the Union office and turn in the contributions to the office of the Voluntary Fund. I don't recall, Mr. Riddle, any specific instructions other than

that, excepting this, I did fail to mention this. I told them under no circumstances could anyone collecting on the job inform any employee that he must contribute as a condition of employment or continued employment or union membership. I did that.

Q. I see. Sir, did you tell them whether or not it would be appropriate for stewards to refer to these payments as assessments? A. I don't recall ever discussing the word "assessments" with them in conjunction with this Fund.

Q. You never told them that this would be all right for stewards to—— A. I told them that——

Q. No, would you please, sir, answer my question.
[1,906] Did you or did you not tell them it would be all right for stewards to refer to these collections as assessments? A. I have no recollection of telling them that.

Q. And you, of course, don't know whether they did or not? A. No, I do not.

Q. I take it that you didn't contemplate that these solicitations would be referred to as assessments? A. I was unconcerned whether they called it assessments, contributions, dobies or whatever they called it, just so long as they were solicited without anyone being told that they had to make a contribution or pay an assessment or anything else as a condition of employment or union membership. I didn't really care what they called them. It didn't make any difference.

Q. Are you telling this Court, sir, that to a union member that a contribution or request for contribution could be called an assessment without misleading that union member? A. Yes, of course. There are many different names given by anyone, pipefitters, to any sort of a payment they might make. I have heard—I have heard pipefitters refer to the monthly periodic dues as a doby.

Q. Yes, sir. What do you understand an assessment to mean, Mr. Craig? [1,907] A. An assessment is a sum of money which is given by one person to another.

Q. Is that your understanding of what an assessment is? A. Yes, sir.

Q. Have you looked it up in the dictionary recently? A. No, I have not.

Q. You have had occasion to think about it in the last several days? A. I have had occasion to think about all aspects of this situation the last several days.

Q. Well, sir, have you ever understood an assessment to mean or to be synonymous with a tax or a right for a membership for a participation in some activity? A. It could be and on the other hand it could not be.

Q. Well, in union parlance are assessments usually and commonly referred to as that which a member pays to his union for the purpose and for the privilege of belonging to that union? A. No, sir.

Q. It is your testimony, sir, that assessments are not usually and normally referred to by members as that which they must pay in order to maintain their membership? A. That is my testimony, sir. They use other words. Most often they use dues.

[1,908] Q. Well, do you consider the words dues and assessments somewhat synonymous? A. Oh, they are synonymous as a matter of law.

Q. Yes. Now, sir, again I would ask you if within the purview of your advice whether or not the calling or denominating of these collections as assessments would be well within your advice? A. Yes, because I was unconcerned what they called it as long as they did it the way I told them to do it and as long as they avoided the things that I told them they had to avoid they could call it a rose by any other name. I didn't care what they called it.

Q. Sir, was it of any concern to you that the members of the Union on the job might consider an assessment in the normal way that union members consider it? A. I don't think I understand your question.

Q. Well, let me put it this way: You say you didn't care what they called it. A. That's right.

Q. Was it of any concern to you as to what the members who were being solicited thought about it, the atmosphere in which the solicitation was made, was that of any concern to you? A. None, because it made no difference as a matter of [1,909] law and as a matter of procedure. I would have no way of knowing what assumptions people reach. I have no way of knowing what people think. My concern is what was said, what was done, and how it was done.

Q. Sir, would it be of any concern to you, speaking of the atmosphere in which these solicitations were made, in your advice to your clients, if the solicitations were made on the morning that a new person reported to the job? A. No, sir.

Q. That wouldn't be of any concern to you as a lawyer? A. No, sir. It would be of no concern to me as a lawyer. I see no difference the first day, the second day. The first day would seem to me to be the logical day to do it.

Q. As a voluntary non-compulsory payment? A. Yes, sir.

Q. Didn't you make it very clear in your opinion that these should not be compulsory in any sense of the word? A. I did not say that, Mr. Riddle. I said that——

Q. Well, in your opinion to them did you not make it clear that in no way should it appear compulsory to the members who were asked to contribute? A. No, sir, I did no such thing. I simply told them that the contributions must not be made a condition of employment or a condition of Union membership and that was the extent of

[1,910] my advice to them on what they must do, what they must not do, and how they should do it.

Q. Mr. Craig, do you recall while representing this same client making certain representations to the United States Department of Labor in Washington, D. C., in which you told them what your advice to these same clients were? A. Yes, sir, I remember that very well.

Q. Let me ask you this, sir: Do you recall telling the representatives of that department that you advised them and that they knew that if they made the funds compulsory they would violate the law, and you used the word "compulsory"? A. That is a part of what I said.

Q. What else did you say? A. But something is left out.

Q. All right, what was left out? A. I said—I used the word "compulsory" limited to a requirement that contributions would govern or that the failure to make contributions would have something to do with employment or union membership. The use of my word "compulsory", when I talked to Frank Kleiler, the head of the Department of Labor, was that as long as the contributions did not require or as long as continued employment or the obtaining of employment or union membership did not depend on making contributions, that it was legal, and the compulsion I referred to was limited [1,911] to those areas.

Q. Sir, in using the word "compulsion" do you say now that that has some relevance in the atmosphere under which these contributions would be solicited? A. No.

Q. It would not? A. It would have no relevance unless you added one more factor, that contributions were required in order to be able to work or in order to get membership in the Union. That was the only area I ever talked about compulsion or voluntary.

Q. You do recall now having talked about compulsory and non-compulsory? A. I don't recall using the word

"compulsory". I recall very clearly and distinctly all of my conversation with Mr. Kleiler in Washington and with the members of his staff.

Q. Sir, do you recall further in representing these clients that they should not make it appear to be compulsory and based upon your advice they used the term "voluntary"? A. I told—Are you speaking of the conference with Mr. Kleiler?

Q. I am talking about your representations to the people in Washington. A. I told Mr. Kleiler and the members of his staff that everything that was done in connection with this plan, including [1,912] the language on the card and the word Voluntary was done upon my directions.

Q. All right, sir. Sir, to go back to the situation I mentioned earlier, do you feel that the atmosphere in which a solicitation is made would have some bearing on whether it is compulsory in the mind of the person being solicited? A. I'm afraid I don't understand what you mean by atmosphere.

Q. Atmosphere. Well, let me hypothesize some atmosphere.

Suppose a person who is without work, with delinquent bills, with a family to support, and looking for a job, and after three months of unemployment shows up on the job, on a 562 job, and within a matter of minutes is presented the so-called Voluntary card. That is the type of atmosphere I am speaking of when we talk about some type of compulsion. A. I do not——

Q. Is that clear now? A. I do not view that as compulsion in any sense of the word. The man could either make the contribution or he could refuse to make the contribution, as he saw fit. His job did not depend upon it. It could not depend upon it. If there were any indication by words or acts that his job depended upon it he would get relief with full back pay from the National

[1,913] Labor Relations Board. So he would not be under compulsion and if by the wildest stretch of the imagination there were such compulsion, he could get relief with back pay.

Q. You think the hypothetical situation I just mentioned to you goes beyond the wildest stretch of imagination, sir? A. I think the outline of the facts appears to me to be quite wild. It just doesn't happen that way.

Q. It doesn't happen that way? A. No, sir.

Q. You haven't had the advantage of hearing the testimony offered in the court, have you? A. I have heard none of the testimony.

Q. Sir, did you give these clients any advice about the use of Union stewards for regular and frequent collection of these non-compulsory contributions? A. Yes, I did.

Q. What did you tell them? A. I told them that they were free to use Union stewards to solicit and receive contributions, they could use the stewards or anyone else they wanted to.

Q. Sir, in your trip to Washington representing these defendants, at the same time that we were talking about before the Department of Labor, do you recall being asked whether or not Union stewards were used to collect these contributions? [1,914] A. I don't recall being asked that question.

Q. Do you recall in response to that question that you said that basically the contributions were paid by individuals and that there may be instances where other men offered to take in the contributions of people they were working with? Do you recall making that response to the question with respect to whether or not stewards were making collections on the job? A. I don't remember such a question being propounded to me and I certainly don't remember giving such an answer to the question I don't remember being propounded. I'm not saying that the

question of stewards soliciting and receiving contributions was not discussed during that meeting. I'm not saying that, but the question that you propounded, I have no recollection of that being propounded to me.

Q. You recall the question arising at this conference of whether or not the stewards were used to collect these funds, and further—— A. No, sir, I do not.

Q. You do not? A. No, sir, I do not.

Q. Let me ask you the question slightly different. Do you recall the proposition being raised as to—in connection with the compulsory feature of these contributions? A. Oh, yes, now——

[1,915] Q. As to whether or not the presence of stewards on the jobs regularly and frequently making collections from people working under them would amount to some type of compulsion? Do you remember that discussion arising? A. No. I remember a discussion of stewards and the activities of the stewards, which was a discussion in the context of the question of whether as a condition of employment or union membership contributions had to be made and whether or not stewards had told anybody that they wouldn't be able to work or wouldn't be able to have union membership if they did not contribute. Now, we discussed that.

Q. Well, in that same light was it discussed that stewards or foremen having the prerogative and discretion to assign jobs, harder ones to certain people, easier ones to certain people, the right to recommend layoffs, the right to recommend hiring, people vested with that sort of discretion, if those same people make these so-called voluntary solicitations, if that might amount to compulsion? Do you remember that discussion being raised and stewards used in that connection? A. No, as a matter of fact, neither stewards nor the foremen have any such discretionary rights.

Q. They do not, is that your testimony? A. No, sir, they do not. They do not on construction projects. The general superintendent in charge of the job [1,916] would do that or a construction superintendent assigned to a particular area in a job would make those assignments.

Q. Work assignments? A. Yes.

Q. What function from your understanding does the foreman perform? A. The foreman is a person who is in the nature of a straw boss in the sense that acting under the supervision, direction and control of the superintendent of employment he will receive orders and directions from the superintendent and pass them along to the people working in his crew. Now, the stewards don't even have that sort of a function.

Q. Even though they are both a steward and a foreman or general foreman? A. I never heard of a person being a steward, a foreman or a general foreman at the same time. As a matter of fact——

Q. You have never heard of that? A. No, sir, I have not.

Q. All right, sir, go ahead. Did you have some further response to that question? A. No, I think not. I think that covered it adequately.

Q. Sir, I would ask you further in that context whether you advised these defendants to keep the contributions and the collections entirely separate from the activities of the [1,917] Union? A. I don't think I understand your question.

Q. Well, in advising these defendants how to handle this Fund, whether you told them that the solicitations and the collection of the proceeds of the solicitations should be a separate and distinct activity from the activities of the Union? A. Yes, I told them that in this kind of an instruction, do not take any money listed as a contribution and put it in the treasury of the Union, do not commingle the funds, have a separate facility that

will be used for whatever business or record keeping requirements that are in the separate fund, and have that administered and maintained apart from the general administration of the financial affairs of the Union.

Q. And the suggestion or advice you gave them about separateness and different activities and not commingling, not having them commingled, had reference to commingling of the funds and not the activities, I take it? A. Oh, it included activities.

Q. You included that? A. I just told you that there must be a total separation of the activities of the Union as it relates to membership and employment and labor contracts and the constitution and by-laws of the Local Union, and I explained to them and I instructed them specifically that the thing they had to [1,918] carefully avoid was putting the money into the treasury of the Union, commingling it, it should be in a separate fund, it should be handled as a separate fund; and that the Union as such should not in any way require contributions as a condition of membership or participation in the activities and affairs of the Union or employment.

Q. Sir, did you give them any advice about substituting these contributions for regular income into the Union treasury? A. Your question doesn't ring a bell. Can you ask it in a different way?

Q. All right. Let me ask it in a different way. Did you give them any advice following their initial consultation with you at which they said they wanted to increase their assessments to 4 per cent of the gross? A. Oh——

Q. You remember what I'm talking about? A. I think I know what you're talking about.

Q. All right, sir, talking about that subject, now then, what do you understand—— A. When you use the word "assessment," you necessarily are talking about a part of the periodic dues structure of the Local Union. The

dues structure of the Local Union consists of two things. It consists of——

Q. Sir, if you would, answer my question. My question [1,919] was in connection with their desire to make the 4 per cent assessment charge against their members, whether or not you gave them any advice about using a part of that total 4 per cent and having that substitute for contributions rather than regular Union assessments. Did you give them any advice about that? A. Yes.

Q. What did you tell them? A. In response to an inquiry from them concerning their desire and intention to adjust the assessment portion of the periodic dues of the Union, they consulted with me about it, I prepared the notices which would have to be submitted in advance so that the membership could vote on the question at a Union meeting, told them how to do it, and I told them it was all right to do it.

Q. All right, sir. Sir, did they tell you at this meeting what they were driving at was to get a dollar and a half a day from their members? A. I don't remember——

Q. You don't remember that? A. ——being told that they were looking for a dollar and a half a day for anything. I do remember being consulted about an adjustment of the assessment portion of the Union dues, yes, I remember that.

[1,920] Q. Did you give them any advice about not using or considering these contributions as being regular Union funds? A. The contributions are not Union funds, regular or irregular. The assessments of which you speak are something entirely different. Those are Union funds. They are a part of the dues structure of the Union. They are two entirely different things.

Q. Well, sir, what are Union dues and proceeds or Union funds used for? A. Union funds are used for all of the objects and purposes which are spelled out in the Constitution and By-Laws of the Local Union.

Q. All right, sir. Do you know whether or not charitable contributions are a part and parcel of the legitimate expenditures of Local 562? A. Yes, they are a part and parcel of the legitimate expenses from the funds of the Union.

Q. And what about recreation centers, are they a part and parcel of the regular and legitimate and proper expenditures of the Union from its regular Union funds? A. Not Local 562. They have no such thing.

Q. Local 562 has no such thing? A. No, sir, it does not.

Q. No recreation center? [1,921] A. No, sir, it does not. Never did have.

Q. Are you familiar with the farm or the area up around Clarksville? A. Yes, sir, I am.

Q. And you say that is not Local 562's property? A. No, it is not, sir.

Q. Who does it belong to? A. The property in Clarksville is owned in part by the Voluntary Fund and in part by the jointly administered Health & Welfare Trust Fund of the employers who contribute to the Health & Welfare Trust Fund.

Q. Sir, do you know that a part of it up there is owned by Voluntary Fund, Incorporated? A. I don't know whether it is incorporated or not.

Q. What about this Voluntary Fund that you set up, is it incorporated? A. I don't know.

Q. You mean that this machinery, this device that you assisted in setting up—— A. I understand you.

Q. You don't know whether that is a corporation or—— A. The program that I set up was an unincorporated program.

Q. What was it? Just what type of a legal animal was it? [1,922] A. This is a trust by operation of law. It is a fund which is accumulated as a result of solicitations

for contributions and contributions made by persons to a single individual.

Q. You say its legal denomination would be a trust? A. Yes.

Q. Is that the type of legal animal it is? A. Oh, it's a trust fund all right.

Q. The person who administers it, I take it from your definition, would be the trustee? A. That is correct, yes.

Q. What did you call him when you set him up? A. I told——

Q. What did you call him when you set him up, when you drafted this Voluntary card, a trustee or director? A. I didn't call him anything.

Q. Well, you prepared this card, didn't you? A. The card?

Q. The card that everybody signed. A. May I see the card, please?.

Well, Mr. Riddle, this card doesn't call him anything.

Q. Well, do you know what he was called? A. I really don't, because in my advice to them, in response to their inquiries, I was talking in terms of a single [1,923] person who would be in charge of this Fund. I don't recall giving him a name or title or anything like that. Now, I know that he occupies a fiduciary relationship to the contributors and——

Q. Well, isn't he called a director? Don't you know that as a matter of fact? A. I really don't know whether he's called director, manager, guy in charge, or what. I really never concerned myself with that.

Q. You would consider him a trustee by your concept of the legal animal that was created by your—— A. Oh, there's no doubt that he is a trustee.

Q. Were you asked advice as to what the trustee's responsibility was for handling these funds? A. The word

"trustee" wasn't used, but I certainly did advise everyone concerning the responsibilities that they would have or anyone would have in using these funds or any portion of them.

Q. You gave them advice as to what they could use them for and how? A. I did, sir.

Q. Did you give them any advice about whether or not they should ever account for their expenditure? A. I told them that they were not required to account [1,924] but they were always subject to give an accounting to any of the contributors if an accounting were asked for.

Q. You told them they were not required to ever make an accounting until somebody asked for it? A. If they didn't want to they didn't have to. This was not a requirement under the law. They could either account or not, but they have to act at the request of a contributor.

Q. You say this was not a requirement under the law? A. That is right, sir.

Q. Under what law was this so-called trust set up? A. There is no law which in any way relates to this Fund.

Q. Is it fair to characterize it sort of outside the law, this Fund that you created? A. No, this is not outside the law.

Q. All right, sir. A. This Fund is within the common law rights of persons to get together and pool their money and engage in political activities. It is a fundamental right which needs no specific law to authorize it, and it is not regulated by any law.

Q. You mean the conduct of this Fund that you created is not regulated by any law? A. That is right, sir.

Q. Not even the common law? [1,925] A. You're talking about the duty to account as a common law trustee, yes, I just told you that. If you're talking in terms of specific statutes, or regulations, no, it doesn't fall within the scope of any of those.

Q. Sir, in the advice as to what these funds could be used for, what did you tell them if anything about that? A. I told them that they should in the card that people signed spell out the areas within which the money would be used.

Q. And you in fact prepared the card? A. I did, sir.

Q. Well, let's look at these areas.

Number one is political? A. Yes, sir.

Q. Number two is education? A. Yes, sir.

Q. Is there any reason so far as you know why a separate entity would need to be created for the operation of an education program? Said another way, couldn't the Union do this within the framework of its own organization and by its regular funds and by its regular officers? A. Oh, certainly they could do it if they wanted to, and this Fund could likewise do it if they wanted to.

Q. And what about legislative, could that be properly done, legislative activities, could that be done under—

[1,926] A. By whom?

Q. Well, by the Union? A. Yes, sir, and likewise by the Voluntary.

Q. What about charity? A. In the case of this Union, it could be done by the Union and by the Voluntary Fund.

Q. Either one? A. Either one.

Q. And Defense Fund? A. Defense Fund, within the limits of certain safeguards spelled out in the Constitution of this Union, money from the Union could be spent for certain definite purposes.

Q. Yes, sir. A. In the Voluntary Fund there are no limitations which water down the subject which may be—

Q. But the Defense Fund could be paid for or defense expenses could be paid for out of the regular Union dues? A. Well, if you will refer to the Constitution of this Union,

you will see in there that there is an article which spells out in detail the circumstances under which any money of the Union can be used for any defense purposes, and the limitations on the right are also spelled out word for word in the Constitution.

Q. The only one of the reasons that appears on the card [1,927] that could be done by the Union was the political one, and that only for federal political purposes? A. Well, of course, the Union can spend its funds for political purposes, contributions, campaigns, for any candidate for city, county or state office. They are only prohibited from making contributions for expenditures on behalf of candidates for federal offices.

Q. So of all of the purposes that you set out on the card, the only one that the Union itself couldn't do would be the part of the political contributions for federal candidates? A. No, there are really others. If you like, I will tell you of one that actually happened.

Q. All right, that couldn't—— A. Could not be done by the Union, could not be done by the Union.

Q. All right. A. I was engaged in the trial of a case involving the Meatcutters Union and their health and welfare trust fund. It was litigated first in this court, later in the appellate courts of the United States. I represented one of the defendants in that case. At the point where we were getting into the Court of Appeals, after trial here, my client ran out of money, and in order to help him finance this litigation which had a bearing on the welfare funds of unions all over the country, [1,928] including 562, the Voluntary Fund made a donation of $2,000, the Teamsters Union made a donation of $2,000, and that money was used to finance the appeal.

Now, the Voluntary Fund could do that. The Union could not.

Q. Well, why couldn't the Union do it if it was for the Union's benefit? A. Because the scope of the objectives

of the Union and the purposes for which union money can be used, as spelled out in the Constitution and By-Laws of this Union, is not broad enough to authorize that sort of a donation.

Q. Not even by unanimous consent of all the members? A. No, it would require an amendment of the Constitution. The members cannot themselves do anything except amend the Constitution. This has been tested out in labor cases in the east.

Q. Is this the only exception? A. No, no, there are many things the Voluntary Fund can do that the Union could not do. It is not limited just to political activities.

Q. Well, can you think of another one for an illustration? A. Yes. Persons who might be a union member and who might perhaps be out of work because the Union is on strike, many times these persons become seriously involved in financial [1,929] difficulties, even when their union pays them certain minimum strike benefits, they still may need more help. Some members on strike more than others, some perhaps to meet a mortgage, some to pay for a car, some with more kids needing more groceries, and they may require greater financial assistance than the strike benefits provided by the Union.

Q. Would you call—— A. Excuse me, I'm not finished.

Q. All right. A. The Union could not go beyond their prescribed strike benefits. The Voluntary Fund on the other hand could if it wished make donations to needy strikers of this union or incidentially, any other union on strike, which could be done by the Voluntary Fund. It could not be done by the Union. Organization activity, strike activities of other unions, that come into financial difficulties, financial problems, where they need financial support from other unions, in the same trade labor movement, they often solicit that financial support.

Local 562 could not give that support. The Voluntary Fund could. And one other good example, and once every year in the City of St. Louis the Local Union of Harold Gibbons, Local 688 of the Teamsters, sponsors a charity show, as we all know, where they raise a half a million dollars once a year to donate to charity. I happen to know that the Voluntary Fund [1,930] bought tickets, so many that it cost them eight to ten thousand dollars to buy tickets.

Q. And you're telling us that that couldn't be done by the Union as one of its legitimate and proper activities? A. That is exactly what I'm telling you.

Q. Would you consider that a proper, legitimate activity of a union? A. I think it is legitimate if it is authorized in the constitution and by-laws of the union. It is not legitimate unless it is authorized in the constitution.

Q. You write it, I believe? A. I did.

Q. Did you leave that out by oversight? A. No, sir.

Q. Did you intend it specifically to eliminate that as a proper legitimate activity of a union? A. I didn't intend specifically to eliminate anything. I intended to draft a constitution showing that the objectives of this union would be in conformity with the generally understood objectives of labor organizations.

Q. All right, sir. Sir, in further giving advice to these clients of yours did you tell them anything about setting up these contributions on a formula based in part upon—well, based upon the hours that they worked? [1,931] A. The only advice I gave on that subject was this, that as far as myself as a lawyer was concerned, that the amount that they set, or the formula they used didn't make any difference as long as they followed my other instructions.

Q. Now, you say the formula that they set or the amount that they determined? A. Yes, sir.

Q. Who did you mean by that, that they determined or they set? A. The contributors.

Q. You mean you assumed that each contributor would voluntarily put in whatever he wanted to ever so often or did you anticipate that this would be a fixed amount determined and the payments would be regular and based upon an identical formula? A. I told these people they could do it either way, it didn't make a bit of difference.

Q. All right, sir. Sir, did you tell them about keeping the records showing the amount that each member of Local 562 pay for each and every work week that they worked showing exactly how much that they paid? A. I told them to keep records which would show the names of persons who make contributions and the amount of their contributions.

[1,932] Q. What was the purpose of that, sir? A. So that if the person in charge were asked by any contributor at any time to account, he would have records which would enable him to do so.

Q. Did you tell them to account for all cash received? A. I told them——

Q. Keep records for that? A. I told them to keep records of all contributions received and the names of the persons who made the contributions.

Q. Sir, did you tell them anything about how the funds should be deposited? A. No, sir.

Q. Did you tell them that they could put all this cash in safe deposit boxes? A. I was asked at one time, after the Fund was in operation, whether it was all right to put the money in safe deposit boxes in cash. I told them yes, it was all right, but as far as I was concerned, if I were doing it as a person, I would use a bank.

Q. Yes, sir. Do you know if they used the bank? A. Yes.

Q. Sir, what did you tell them about giving receipts to members who contributed? A. I didn't tell them anything about that.

[1,933] Q. But you told them that they should keep enough records or sufficient records to at all times account for the monies that they received? A. Yes, sir, yes, sir.

Q. Could you think of any way that that could be done unless receipts were given to the individual contributors? A. Oh, yes.

Q. How? A. First you get individual contributors to sign a card, such as the one you showed me, and then you have a record of some kind to show the name of the person who contributed and what he contributed and you keep that as your record. Now, I——

Q. Sir, do you know if these cards contained the amount that each person contributed? A. The amount of contributions is not—excuse me. There have been more than one card used over a long period of years. My recollection is that the amount of the contribution is shown on the card and if my memory serve me right, I think there is a blank space where the amount is written in or something of that nature.

Q. Do you know if those blank spaces were in fact filled out? A. I have not examined the cards, if that is what you mean. I could not say of my own personal knowledge what the [1,934] completed cards show. I don't know.

Q. All right. Sir, did you tell them that a certain class of people should be excluded from contributing to this Fund? Did you ever tell them that on certain occasions that they could exclude members working on a 562 job from paying into the Fund? I mean "preclude" instead of "exclude", or either one? A. Well, my advice was that they——

Q. No answer that question. Did you ever tell them that? A. I have to answer it yes, but it is not an informative answer.

Q. You mean you have told them that they could exclude or preclude people from paying into this Fund? Your answer to that is yes? A. Yes, as a matter of fact they did.

Q. What type of people did you tell them they could exclude? A. Any type of classes that they wanted to.

Q. They discussed that with you? A. Yes, they did.

Q. Who did? A. I have talked with Eddy Steska about this. I have talked with John Lawler about this. I have talked to [1,935] George Seaton about this. I have talked to Virgil Walsh about this.

Q. Sir, specifically, did you discuss the exclusion of contributors from the Chesebrough-Pond project over in Jefferson City? Did they discuss that with you? A. Chesebrough job? I remember the job. I cannot recall any discussion about contributions or non-contributions from those people. I'm not saying that it wasn't discussed at some time. I certainly don't recall it at the moment.

Q. Sir, did you ever give them any specific categories to exclude from participating in this Union? A. I did not.

Q. Such as apprentices? A. No.

Q. Or people with hardships? A. I gave them no advice or instructions. I did tell them that they could include or exclude anyone they wanted to.

Q. Mr. Craig, did you give them advice with respect to setting up the Callanan Gift Club?

Mr. Daly: Your Honor, may we object to this and ask it be stricken and the jury instructed to disregard it as irrelevant and immaterial and certainly otuside the scope of the direct examination?

The Court: I don't recall any direct examination [1,936] with reference to this, Mr. Riddle.

Mr. Riddle: There wasn't, but I think that this would be within the rule for the over-all interpretation of his testimony, Your Honor.

The Court: I have permitted interrogation of other witnesses on that subject because it went to the voluntariness of the contribution. This witness has testified as to the advice he has given and on direct examination there was nothing about this Callanan Gift Fund and what advice he gave him about it, and I think it is beyond the scope of the direct examination, so I am going to sustain the objection.

Mr. Riddle: All right, just one second, Your Honor.

The Court: Absent your being able to show me where it comes within the purview of it. You haven't demonstrated that to me.

Q. (By Mr. Riddle) All right, sir, did you give them any advice about whether or not this Fund should be headed or in charge of a person who at the same time occupied a position or an office in the Union? A. Yes, sir, I did.

Q. You approved that also, I guess? A. Yes, I approved of it and told them there was nothing wrong with it.

Q. You didn't consider that to be compulsory in any [1,937] sense in the eyes of the membership? A. By no stretch of the imagination.

Q. Whose imagination? A. Mine and the membership.

Q. Yours and you know what their imagination is? A. Mr. Riddle, yes, I really do. I know what these pipefitters think.

Q. Sir, did you give them any advice about whether or not it was necessary for them to keep minutes of the

meeting of the contributors? A. I can't recall discussing that subject with them at all, Mr. Riddle.

Q. Sir, are you familiar with the legal phrase "alter ego"? A. Yes.

Q. What does that mean to you? A. One for the other.

Q. One for the other? A. Yes, or equivalent of, basically the same.

Q. Does this Fund appear to you to be the alter ego of the Union? A. No, sir.

Q. It does not? A. No, sir.

[1,938] Q. You don't think they are one and the same? A. I know they are not.

Q. The members the same? A. I beg your pardon?

Q. Is the membership the same? A. No, there are differences.

Q. In what respect? What are the differences? A. The members of the Union have always been limited in number and have not included pipefitters working here in this area on construction projects as pipefitters. For example, travel card men, transfer card men or other persons perhaps belonging to no union that might work. So that the contributors to the Voluntary Fund have in the past, and I assume now, consisted of persons who are not members of the Union.

Q. They are all pipefitters, they are all people who have worked on Local 562 jobs, aren't they? A. Well, they are people who work on construction projects for employers who have a collective bargaining relationship with the Pipefitters Union.

Q. 562. All right, sir. A. Not 562 jobs by any means.

Q. Sir, the meetings of the so-called Fund, so far as you know, are all held at the Union hall, or at another hall [1,939] used by the Union for its regular meetings? A.

I don't know where the meetings have regularly been held. I don't know.

Q. Sir, to make this entirely clear, it is your testimony that it was your advice to these clients that there was to be no compulsion used in the collection of this money? A. No, sir, as I explained previously——

Q. Well, was compulsion all right in your opinion? A. It might be all right or it might be all wrong, depending upon the nature of compulsion and the area in which it was used. The only prohibited compulsion that I cautioned them against, and I instructed them on, was the admonition that under no circumstances could the obtaining of employment, the continuance of employment or union membership, depend upon the making of the contributions.

Now, this is the area of compulsion that I discussed with them, and this is the same area of compulsion that I discussed with Frank Kleiler up in Washington.

Q. And that type of compulsion you say you advised them that they should not use? A. This is right.

Mr. Riddle: All right.

That is all.

The Court: Anything else, Mr. Riddle? Have you [1,940] concluded your cross-examination?

Mr. Riddle: Yes, sir.

The Court: Any redirect?

Mr. Randall: No redirect.

The Court: All right, step down.

(Witness excused.)

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[1,950] **OBJECTIONS TO COURT'S CHARGE TO THE JURY.**

The Court: What about these first two pages?

Mr. London: Pass.

The Court: Attorney talking to witness?

Mr. London: It is OK.

The Court: This is yours.

(Mr. London indicated yes.)

The Court: All right. The testimony of an accountant is to be received and weighed by you in the same manner as the testimony of any other witness.

Mr. London: We have no objection to that.

The Court: Indictment is not evidence of guilt.

Mr. London: No objection.

The Court: Circumstantial evidence.

Mr. London: As to circumstantial evidence we feel that the instructions offered by the defendants with regard to the law of circumstantial evidence more correctly state the law pertaining thereto.

The Court: Be overruled.

Now, what is your objection to this Government's instruction, which we discussed before? Do you remember?

[1,951] Mr. London: We object to any portion of the indictment being read to the jury. That is not a proper portion of the charge, and gives undue emphasis to those factors which are contained in the indictment.

The Court: Are you going to——

Mr. Randall: We should add we do not object to the fact that the entire indictment is not read.

Mr. London: That is correct.

The Court: Conspiracy is a combination of two or more persons to accomplish some unlawful purpose.

Mr. London: We would object to that. We object to this instruction on the grounds that it is a comment on the evidence, and that it shifts the burden of proof—not shifts the burden of proof, but it lessens the burden of proof, which the Government must sustain in this case, by reference to sleight act, and also his comments, and in view of the fact that the references to secrecy and words of that nature——

The Court: What is wrong with deleting, Mr. Riddle, from the first sentence of the third paragraph, "Since secrecy is ordinarily a feature of a successful conspiracy?"

Mr. Riddle: That's all right.

(The Court struck the quoted clause from the instruction.)

The Court: Let the record show that the instruction says nothing about a sleight act, and that secrecy has been [1,952] deleted.

Mr. London: Just in explanation, I think one of the instructions does, Your Honor. I am not sure. If you say that one doesn't I am sure that you are correct.

The Court: All right. The next instruction is "You are further instructed that to be a member of a conspiracy, a defendant need not know the identity of all of the other members nor all of the details of the conspiracy, nor the means by which the object or purpose thereof was to be accomplished."

Mr. London: We will object to this on the grounds that it contains comment on the evidence is argumentative, and does not fully state the law with respect to the conspiracy instruction submitted by the defendants, and I believe

this instruction—I don't have it in front of me—I believe it is minor act, minor part. I believe that is a comment that lessens the Government's burden of proof.

The Court: Do you want to offer a change on that? The objection will be overruled.

The Court: The crime charged in this case requires proof of specific intent before a defendant can be convicted.

Mr. London: No objection to this, Your Honor.

The Court: Knowingly?

Mr. London: No objection.

The Court: Willfully?

[1,953] Mr. London: No objection.

The Court: Unlawfully?

Mr. London: No objection.

The Court: The indictment alleges the commission of sixty-one overt acts to effect the purpose of the conspiracy. However, it is not necessary that you find that all of such overt acts were performed. The finding of only one overt act is sufficient.

By the term "overt act" is meant any act committed by one or more of the conspirators in an effort to and manifesting an intent or design to accomplish the purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It is necessary only that the overt act, whatever its nature, be knowingly done by one or more of the conspirators during the existence of the conspiracy in furtherance of some object or purpose thereof.

Mr. London: We will object to that on the ground it lessens the Government's burden of proof, Your Honor

please. It is not a correct statement of the law, and it is unsupported by the evidence.

The Court: That will be overruled.

The indictment also charges that a number of means or methods were agreed upon to carry out the conspiracy. However, it is not necessary for the Government to prove that all [1,954] of such means or methods set out in the indictment were agreed upon to carry out the conspiracy or that all such means or methods were actually used or put in operation. It is necessary, however, that the evidense establish beyond a reasonable doubt that one or more of the means or methods described in the indictment was agreed upon to be used in an effort to accomplish some object or purpose of the conspiracy as charged in the indictment.

Mr. London: I object to this as not being supported by the evidence, and at variance with the indictment, there being nothing set forth in the indictment as to the various means and methods.

It constitutes a comment on the evidence.

The Court: That will be overruled.

As I have stated, the crime with which the defendants are charged is that of conspiracy to willfully violate Section 610 of Title 18, United States Code.

(The Court read the entire instruction.)

The Court: I don't think you had any objection to that.

Mr. London: Just standard. Incorrect statement of the law, and unsupported by the evidence.

The Court: All right. Then this is that long one which we modified and incorporated in your suggestion.

Mr. London: With regard—Do you want to [1,955] describe it in some way for the record?

The Court: It is a three-page—You will note that Section 610 prohibits contributions by labor organizations for use in connection with an election for a federal office.

Mr. London: We will object, if Court please, to those portions of that instruction dealing with the evidentiary facts that the jury may consider in reaching their ultimate fact.

I would feel that this is a highly prejudicial comment on the evidence. It takes from the jury their right to consider all of the evidence, and highlights certain portions that they are to consider.

I believe I said that the instruction is argumentative in nature, and the instruction is unsupported by the evidence in the indictment and is not a complete and accurate statement of the law.

The Court: Let the record show that the Court incorporated as part of this instruction Section No. 10, 11, 12, 13, 14, 15, 16 and 17, at the request of the defendant, and that the last part of the instruction requires the jury to consider all the facts and circumstances into evidence.

Mr. London: May we clarify one point for the record, Your Honor? We have added the parts that you have so indicated, but our initial objection was to the instruction with the request that it not be given, and only in the [1,956] alternative did we summit these additional points.

The Court: All right. Then the next one is the Government's position instruction.

Mr. London: We object to that on the grounds it is not truly a position instruction, but is an argument on behalf of the Government. It states evidentiary facts, states facts which are unsupported by the evidence, and does not conform to the requirements of the law for a position instruction.

The Court: The next one—that will be overruled—The next one is your position instruction.

The next one is the advice of counsel.

Mr. London: No objection.

The Court: And then the next one is a great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the Fund is a union fund. However, the mere fact that the payments into the Fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the Fund was not union money.

Mr. London: We will, of course, object to that as [1,957] being one of our theories that the voluntariness is an ultimate issue in this case, and if the money was voluntarily paid, then it is not union money; that this is an incorrect statement of the law pertaining thereto.

Mr. Riddle: Well, Your Honor, we think that it is a correct statement of the law. The fact that money is paid into a union voluntarily or involuntarily, and then that money is used for an illegal act, the fact that it came in either way doesn't have any bearing on whether the expenditure was legal or illegal.

The Court: All right. I will overrule the objection.

In considering whether or not any defendant was a member of the alleged conspiracy, you must do so solely on the evidence concerning his own actions and conduct, and his own connection with the actions and conduct of others. The guilt or innocence of each defendant must be separately considered and decided.

Mr. London: No objection, Your Honor.

The Court: A criminal conspiracy is an offense distinct from the crime which is the alleged object of the conspiracy.

(The Court read the entire instruction.)

Mr. London: We will object that it is a comment on the evidence. It is repetitious of other portions of the charge.

[1,958] The Court: I think I will probably take that out.

Mr. Randall: I thought it was a necessary—frankly, I let my mind drift off. I thought it was a necessary part of the conspiracy though.

Mr. London: They are talking about the mere fact that they violated 610 does not prove they are guilty of a conspiracy, but it is necessary——

(The Court read another portion of the instruction.)

Mr. Randall: All right. I will go along with your objection.

Mr. London: OK.

The Court: Be overruled.

The essential elements which must be proved beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment as to each defendant are—You have got those. You have read it.

Mr. London: We object to this as being an incorrect statement of the law; that the law touching upon conspiracy is more fully set forth and properly set forth in instructions offered by the defendant.

The Court: Burden of proof. Presumption of innocence. Reasonable doubt. All right.

The indictment charges that the defendants willfully conspired to have Local 562 make the contributions and

to willfully consent to the making of such contributions. [1,959] In this connection you are instructed that if under the evidence and the other instructions you find the defendants, or any of them, guilty of willfully conspiring to do either or both of the acts which constitute a violation of Section 610, but find that said conspiracy did not contemplate a willful violation of Section 610, then your verdict of guilty should so state.

Mr. London: I lost sight of it. Let me take a look at it. No objection.

The Court: Unless otherwise specifically indicated, each instruction should be considered by you as referring separately and individually to each defendant.

Mr. London: No objection.

The Court: Twelve of your number.

Let the record show that the defendants, and each of them, object and except to the action of the Court in refusing to direct a verdict at the conclusion of the Government's case, and which motions are lettered "A", "B", "C" and "D", and they again object and except to the action of the Court in refusing to direct a verdict of acquittal at the conclusion of all the evidence, which are lettered "E", "F", "G", and "H", and they object and except to the action of the Court in refusing to give refused instructions lettered "I" through and including "ZZ", and that the Court has refused the instructions on the [1,960] grounds they either improperly declare the law or have been fully covered by the charge.

Mr. London: For the record, Your Honor, I think it is probably in there, but all the objections that we have made to the charge are being made on behalf of all the defendants.

The Court: All right. Let's go out and get going.

DEFENDANTS' REFUSED INSTRUCTIONS.

* * * * * * *

[1,961] **Defendants' Refused Instruction "L".**

Under the law you may find the defendants or any of them guilty of a lesser crime than that charged in the indictment. Therefore, if you find and believe from the evidence beyond a reasonable doubt that the defendants conspired to commit the acts charged in the indictment, but that in so doing they did not act willfully, that is to say, with the intent to violate the law, then you will find the defendants not guilty of the charge set out in the indictment, and you will consider whether the defendants are guilty of having committed said [1,962] offense without willfulness. And, if you find beyond a reasonable doubt that the defendants committed the acts charged against them but that they acted without willfulness or intent to violate the law, you may find them guilty of such lesser offense.

* * * * * * *

[1,964] **Defendants' Refused Instruction "S".**

The Court instructs the jury that unless you find beyond a reasonable doubt that contributions made to the [1,965] Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 involuntarily, you must find the defendants not guilty.

Defendants' Refused Instruction "T".

It is the position of the defendants that they did not conspire to violate any law of the United States. It is further their position that the Political, Education, Legislative, Charity and Defense Fund was a voluntary fund created by certain union members of Local 562, after seeking advice of counsel; that the fund was created for politi-

cal, educational, legislative, charity and defense purposes, and for the promotion of the general welfare of all contributors to the fund; that it was a fund separate and apart from Local 562; and that the contributions to the fund were voluntary. In this connection, the Court instructs the jury, that if you find that the Government has failed to prove beyond a reasonable doubt that contributions were made to the fund involuntarily, you must find the defendants not guilty.

Defendants' Refused Instruction "U".

If you find that the defendants acted in good faith believing their acts with respect to the Political, Educational, Legislative, Charity and Defense Fund to be lawful, then you must find the defendants not guilty. In other words, unless you find beyond a reasonable doubt that the defendant acted in [1,966] bad faith, your verdict shall be not guilty.

* * * * * * * *

[1,967] **Defendants' Refused Instruction "Z".**

The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits labor union money from being used for such purposes. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and did not constitute the payment of union dues or labor union money, you must find the defendants not guilty.

Defendants' Refused Instruction "AA".

The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions

to candidates for political office. The law merely prohibits union dues or assessments from being used for such purposes. Therefore, if you find that contributions made to the Political, [1,968] Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and did not constitute the payment of union dues or assessments, you must find the defendants not guilty.

Defendants' Refused Instruction "BB".

The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits money of a labor union from being used for such purposes. In this connection, money contributed by members of a labor union, voluntarily, for the purpose of being used for poltical purposes, with knowledge of such purpose is not money of a labor union. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and that they were made by the members for political purposes then you must find the defendants not guilty.

* * * * * * * *

[1,973] **Defendants' Refused Instruction "MM".**

You will note that the acts charged in the indictment are alleged to have been done "willfully".

An act is done "willfully" if done intentionally and purposely and with the specific intent to do that which the law forbids; that is to say with evil motive or bad purpose either to disobey or to disregard the law.

Defendants' Refused Instruction "NN".

An act is done "knowingly" when it is done with actual knowledge of the facts and with the purpose and intent of violating the law. Unless there is a purpose and intent to violate the law, an act is not done knowingly. [1,974] An act is done "wilfully" if done intentionally and with an evil intent.

An act is done "unlawfully" if it is done contrary to the law.

* * * * * * * * *

[1,977] **Defendants' Refused Instruction "VV".**

The Court instructs the jury that the law permits [1,978] labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits labor union money from being used for such purposes. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 and did not constitute the payment of union dues or labor union money, you must find the defendants not guilty.

* * * * * * * *

Defendants' Refused Instruction "XX".

The Court instructs the jury that if you find and believe from the evidence beyond a reasonable doubt that the defendants conspired to commit the acts charged in the indictment, [1,979] but that in so doing they did not act willfully, that is to say, with the intent to violate the law, then you will find the defendants not guilty of the charge set out in the indictment, and you will consider whether the defendants are guilty of having committed said offense without willfulness. And, if you find beyond a reasonable doubt that the defendants committed the

acts charged against them but that they acted without willfulness or intent to violate the law, you may find them guilty of such lesser offense. Unless you find the facts so to be, beyond a reasonable doubt, you must find the defendants not guilty.

Defendants' Refused Instruction "YY".

The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits money of a labor union from being used for such purposes. In this connection, money contributed by members of a labor union, for the purpose of being used for political purposes, with knowledge of such purpose is not money of a labor union. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 and that they were made by the members for political purposes, then you must find the defendants not guilty.

[1,980] Add to defendants' Specific Intent instruction the following: Such intent may be determined from all the facts and circumstances shown by the evidence.

Defendants' Refused Instruction "ZZ".

The crime charged in this case requires proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the Government must prove that the defendants knowingly, willfully and purposely did an act which the law forbids.

* * * * * * * *

[2,054] **COURT'S CHARGE TO THE JURY.**

The Court: Members of the Jury:

It now becomes my duty to give you instructions as to the law which you will use and be governed by and apply to the facts in this case in reaching your verdict on the questions that are presented to you for your decision.

You have listened to the evidence and the arguments of counsel and it now becomes my duty to instruct you as to the law. I can only give you these instructions orally as I am now doing. There is no provision in the law that permits me to give you your instructions in any other manner. It is, therefore, necessary that you pay close attention so that you [2,055] may carry these rules of law to your jury room and there use and apply them to the facts of this case.

You should bear in mind that while it may appear from time to time that I am giving you special instructions, that is not correct. I am giving you instructions which should be received by you to apply as a whole. Don't attempt to separate them and disregard part of them and use and apply the remainder.

It is my duty to pass on all questions of law and at the close of the argument to charge you with respect to the law; in other words, to tell you what the law is to guide you in your deliberations. It is your function and duty to pass on the facts, and when you have determined what those facts are, to apply the law as the Court shall give it to you to those facts. In approaching and performing your duties, you should have but one purpose; you should have a zeal and determination to do justice, exact and impartial, between the Government on the one hand and the defendants on the other. You have nothing to do with the matter of fixing punishment. That becomes the sole duty of the Court in the event the defendants are found guilty. You will, therefore, direct

your attention to the testimony in the case and determine from it what the true facts of the case are and apply the law as I shall give it to you, to those facts, and thus arrive at a verdict under the law and the evidence.

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony [2,056] as well as all the evidence and facts and circumstances detailed before you and which have been presented in this trial. In weighing and reconciling the testimony, you should look to the demeanor and manner of the witness testifying, his willingness or unwillingness to answer; to the lack of interest, or interest, of any witness in the case; to the relationship of the parties; to the means of knowledge, or lack of knowledge of the facts about which such witness testifies; to the opportunity of the witness to know the facts about which he purports to testify; to the reasonableness or unreasonableness of the witness's testimony; to its probability or improbability, and whether the witness has made contradictory statements or not, about material matters involved in this case, and thus having carefully considered all the matters, you must fix the weight and value of the testimony of each and every witness and of the evidence as a whole.

If you should conclude that a witness has willfully testified falsely to some material matter in the case, you should consider that in determining the credibility of the rest of such witness's testimony, and you are at liberty to reject all of such witness's testimony, as well as the part which you feel to have been willfully false.

There has been testimony by some witnesses that they have spoken with attorneys about the case prior to being called as a witness. There is nothing improper about an attorney [2,057] interviewing a witness prior to the time such witness testifies in the case.

It is the duty of attorneys to object to questions asked by opposing counsel when they feel that such objections

are appropriate and necessary, and you are in no way to consider in your deliberations the frequency or nature of the objections made by counsel for either side.

The testimony of an accountant is to be received and weighed by you in the same manner as the testimony of any other witness. Any summaries or charts prepared by him and admitted in evidence are competent for the purpose of explaining facts disclosed by books, records, and other documents which are in evidence. However, such charts or summaries are not in and of themselves evidence or proof of any facts. So if you should find that such charts or summaries do not reflect facts and figures shown by the books, records, documents, and other evidence in the case, you must disregard them.

That is to say, such charts or summaries are used only as a matter of convenience, and unless you find that they are in truth summaries of facts and figures shown by the evidence in the case, you are to disregard them entirely.

The indictment is not to be considered by the jury as any evidence of the guilt of the defendants or any of them. It must not, in your minds, create even a suspicion of guilt [2,058] upon their part. It is merely the manner by which the case is brought before you for your consideration, and the fact that an indictment has been returned may not be considered as any evidence of the guilt of any defendant.

Evidence is of two kinds, direct and circumstantial. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eye witness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence; it requires only that the jury, after weighing all the evidence, must be convinced of the guilt of the defendant beyond a reasonable doubt before he can be convicted.

In this case, prosecution is based on a statute which is an Act of Congress and federal law. It reads in pertinent part as follows:

> "If two or more persons conspire to commit any offense against the United States, and one or more of such persons do any act to effect the object of the conspiracy, such person . . ."

shall be guilty of committing an offense against the United States, and then the statute provides the penalty with which you are not concerned.

[2,059] The indictment based on this statute, omitting the caption, reads as follows:

"The Grand Jury charges:

"1. That at all times hereinafter mentioned defendant Pipefitters Local Union No. 562, St. Louis, Missouri (hereinafter referred to as Local 562), affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (hereinafter referred to as the United Association), was a labor organization within the meaning of Section 610 of Title 18, United States Code, that is to say, an organization in which employees participated and which existed, in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"2. That at all times hereinafter mentioned John F. Burke was an officer of defendant Local 562.

"3. That from on or about October 12, 1966, up to and including the date of the filing of this indictment, defendant Lawrence L. Callanan was an officer of defendant Local 562.

"4. That at all times hereinafter mentioned defendant John L. Lawler was an officer of defendant Local 562.

"5. That at all times hereinafter mentioned, defendant George Seaton was an officer of defendant Local 562. [2060] "6. That at all times hereinafter mentioned Edward J. Steska was an officer of defendant Local 562.

"7. That at all times hereinafter mentioned, the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund (hereinafter the Fund), was a fund of defendant Local 562, established, maintained, and administered by officers, employees, members, agents, foremen and job stewards of defendant Local 562, to effect a regular and systematic collection, receipt, and expenditure of moneys obtained from working members of defendant Local 562 and from working members of other labor organizations employed under the jurisdiction of defendant Local 562.

"8. That at all times hereinafter mentioned, the term 1964 General Election refers to the general election held in 1964 pursuant to the laws of the United States and of the several states at which, among others, Presidential and Vice Presidential electors, United States Senators and Representatives to Congress were voted for——

(Defendant Callanan had a coughing spell.)

The Court: Take him outside.

(Defendant Callanan was taken from the courtroom by defense counsel. Following a brief period, defendant Callanan and defense counsel returned to the courtroom, and the Court continued his charge to the jury as follows:)

The Court: (Continuing) ——and the term 1966 General [2,061] Election refers to the general election held in 1966 pursuant to the laws of the United States and of the several states at which, among others, United States Senators and Representatives to Congress were voted for.

"9. That from in or about 1963 and continuously thereafter up to and including the date of the filing of this in-

dictment, in the City of St. Louis, in the Eastern District of Missouri, and elsewhere, Local 562, Lawrence L. Callanan, John L. Lawler and George Seaton, the defendants herein, and John F. Burke and Edward J. Steska, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did conspire and agree with each other and with divers other persons to the grand jurors unknown, to violate Section 610 of Title 18, United States Code, in that they did unlawfully, wilfully, and knowingly conspire and agree to have Local 562 make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for, and to wilfully consent to the making of such contributions and expenditures by Local 562.

"10. It was a part of said conspiracy that the defendants and co-conspirators would establish and maintain a special fund entitled 'Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund,' which fund would have the appearance of being a wholly independent entity, [2,062] separate and apart from Local 562; and that the defendants and co-conspirators would thereby conceal the fact that Local 562 would make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for.

"11. It was further a part of the conspiracy that defendant John L. Lawler would be Director of the Fund and that at a certain time he would be succeeded as Director of the Fund by defendant Lawrence L. Callanan; and that the Director of the Fund would appear to have control and management of the Fund, including the receipt and disbursement of money and the keeping of its books.

"12. It was further a part of the conspiracy that defendants John L. Lawler and Lawrence L. Callanan would

not have the books of the Fund audited, or afford members of defendant Local 562 and other pipefitters contributing to the Fund any accounting for the money on hand, paid into or disbursed from the Fund.

"13. It was further a part of the conspiracy that the defendants and co-conspirators, by means of the creation and operation of the Fund, would continue in new form the practice of collecting for political purposes One Dollar ($1.00) per day worked from members of defendant Local 562 and Two Dollars ($2.00) per day worked from non-member pipefitters [2,063] employed on jobs within the jurisdiction of defendant Local 562.

"14. It was further a part of the conspiracy that the defendants and co-conspirators would waive and fail to enforce Section 180 of the Constitution of the United Association in order to facilitate the payment of monies into the Fund, by failing to collect from non-members of Local 562, working under its jurisdiction, a required travel card fee of not in excess of Eight Dollars ($8.00) per month, and in lieu thereof, collecting payments to the Fund at the rate of Two Dollars ($2.00) per eight-hour working day from such non-members.

"15. It was further a part of the conspiracy that the defendants and co-conspirators would cause general foremen, area foremen, job stewards, officers, agents, employees and other members of Local 562 acting in a supervisory capacity over members and pipefitters working on jobs under the jurisdiction of Local 562, to become agents of the Fund in order to facilitate the collection of monies for the Fund on a regular basis on job sites and at the headquarters of Local 562, 1242 Pierce Avenue, St. Louis, Missouri.

"16. It was further a part of the conspiracy that the defendants and co-conspirators, in order to facilitate an orderly, regular and systematic collection of contributions to the Fund, would cause the agents of the Fund, referred

to in Paragraph 15 of this Indictment to distribute to the pipefitters working at all job sites contribution agreement cards to be [2,064] signed by such pipefitters, and to distribute to foremen and job stewards at such job sites printed collection sheets for the Fund upon which to record the number of hours worked by such pipefitters and the amount of the contributions paid by each into the Fund; and that such foremen or job stewards would advise newly employed pipefitters at such job sites of the existence of the Fund and of the rates of participation, that is, for members of Local 562, One Dollar ($1.00) per eight hours worked; and after January 1, 1965, Fifty Cents ($.50) per eight hours worked, and for members of other pipefitter locals Two Dollars ($2.00) per eight hours worked.

"17. It was further a part of the conspiracy that defendant Local 562 would make substantial contributions in connection with the 1964 General Election and the 1966 General Election and that defendants Lawrence L. Callanan and John L. Lawler would consent to such contributions by issuing checks drawn upon the account of the Fund in the approximate total amount of One Hundred Fifty Thousand Dollars ($150,000)."

Following these allegations the indictment sets forth 61 overt acts which were alleged to be performed by the defendants in order to effect the object of the conspiracy.

A conspiracy is a combination of two or more persons to accomplish some unlawful purpose. It necessarily involves a mutual understanding or agreement between the members of the conspiracy to accomplish an unlawful act. [2,065] In order to create a conspiracy there must be not less than two persons to the understanding or agreement. There is no limit on the number in excess of two. Of course, two are required, because a person cannot enter into a conspiracy with himself, so if two or more persons confederate, or agree, or have a common understanding for

the accomplishment of an unlawful purpose or act, that is, to commit an offense against the laws of the United States, then those persons so agreeing or having such understanding, are conspirators, and the agreement or common understanding is a conspiracy.

By its very nature, a conspiracy seldom can be proved by direct evidence. Therefore, the law does not require that the Government show that the members of the alleged conspiracy met together and entered into any express or formal agreement for an unlawful purpose or that they stated either in writing or by spoken words what their object or purpose was to be or how such purpose was to be achieved. However, the Government must prove, in order to establish that a conspiracy existed, that the alleged members, in some way, impliedly or tacitly came to a mutual understanding to try to accomplish a common and unlawful design, knowing its object. Such proof may be made by circumstantial evidence, that is by showing facts and circumstances, including the acts and conduct of the alleged conspirators, from which you may draw the conclusion that the alleged conspirators had a common design and [2,066] understanding and knowingly and willfully joined together with the intent to accomplish the common and unlawful purpose charged in the indictment.

You are further instructed that to be a member of a conspiracy, a defendant need not know the identity of all of the other members nor all of the details of the conspiracy, nor the means by which the object or purpose thereof was to be accomplished. In this connection, you are instructed that a person who has no knowledge of a conspiracy, but who merely happens to act in a way which furthers the object or purpose of the conspiracy or to associate with others who are charged does not thereby become a conspirator. However, if persons knowingly pursue by their acts the same unlawful object, all

with a view to attaining such object, that is circumstantial evidence tending to show they are engaged in a conspiracy to effect that object. Knowing and intentional cooperation in some form among those charged must be shown by the facts and circumstances in evidence. That is to say, before the jury may find that a defendant joined and became a member of a conspiracy, the Government must establish by the evidence not merely that the conspiracy was formed but that such defendant intentionally, knowingly and willfully participated therein with the intent to advance or further the object or purpose of the conspiracy. The extent of a defendant's participation is not determinative of his guilt or innocence. A defendant may [2,067] be convicted as a conspirator even though he plays a minor part in the conspiracy, provided you find the required knowing and willful participation therein by the defendant with the intent to promote the common design.

The crime charged in this case requires proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the Government must prove that the defendant knowingly, willfully and purposely did an act which the law forbids. Such intent may be determined from all the facts and circumstances shown by the evidence.

An act is done "knowingly" if done voluntarily and with knowledge of the facts, and not because of mistake or inadvertence or other innocent reason.

An act is done "willfully" if done voluntarily and purposely and with the specific intent to do that which the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

An act is done "unlawfully" if done contrary to law.

The indictment alleges the commission of 61 overt acts to effect the purpose of the conspiracy. However, it is not

necessary that you find that all of such overt acts were [2,068] performed. The finding of only one overt act is sufficient.

By the term "overt act" is meant any act committed by one or more of the conspirators in an effort to and manifesting an intent or design to accomplish the purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It is necessary only that the overt act, whatever its nature, be knowingly done by one or more of the conspirators during the existence of the conspiracy in furtherance of some object or purpose thereof.

The indictment also charges that a number of means or methods were agreed upon to carry out the conspiracy. However, it is not necessary for the Government to prove that all of such means or methods set out in the indictment were agreed upon to carry out the conspiracy or that all such means or methods were actually used or put in operation. It is necessary, however, that the evidence establish beyond a reasonable doubt that one or more of the means or methods described in the indictment was agreed upon to be used in an effort to accomplish some object or purpose of the conspiracy as charged in the indictment.

As I have stated, the crime with which the defendants are charged is that of conspiracy to willfully violate Section 610 of Title 18, United States Code.

[2,069] Section 610 makes it unlawful for any labor organization to make a contribution in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in Congress are to be voted for or in connection with any primary election held to select candidates for any of such offices, and further make it unlawful for any officer of a labor organization to willfully consent to any such contribution by the labor organization. The term "contribution" includes a

gift or payment of money to be used in connection with the candidacy of a person seeking election to a federal office.

A "labor organization" means an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and is commonly referred to as a union.

You will note that Section 610 prohibits contributions by labor organizations for use in connection with an election for a federal office. It does not prohibit any person from making or agreeing to make such contributions or setting up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization. That is, the statute is not violated unless the [2,070] contribution is in fact and in the final analysis made by the labor organization.

In this case evidence was offered by the Government to the effect that funds were contributed to or on behalf of candidates for federal office and that such funds were paid out upon checks drawn upon the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund. It is necessary, therefore, that the evidence establish that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union. As to this issue, the defendants contend that the fund in question was a bona fide entity separate and apart from the union, established by the voluntary good faith act of members of the pipefitters Local 562 and others, from which contributions to candidates were made on behalf of the persons who created the fund

and not on behalf of the union. On the other hand, the Government contends that the fund was a mere artifice or device set up by the defendants and others as a part of the alleged conspiracy to give the outward appearance of being an independent and separate entity but in fact constituting a part of union funds.

In determining whether the Pipefitters Voluntary Fund was a bona fide fund, separate and distinct from the union or a mere artifice or device, you should take into consideration [2,071] all the facts and circumstances in evidence, and in such consideration you may consider

1. Whether or not payments to the fund were routinely made at regular intervals at job sites,

2. Whether or not payments to the fund were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union,

3. Whether or not the payment to the fund was determined by a formula based upon the amount of hours or overtime hours worked upon a job under the supervision of the union,

4. Whether or not payments to the fund were at one rate for 562 members and at a different rate for members of other unions,

5. Whether or not payments to the fund began, continued and terminated with employment on a job under the jurisdiction of the union,

6. Whether or not monies of the fund were used to provide benefits to union members in their capacity as members,

7. Whether or not payments to the fund by members of other unions were in lieu of payments to the union in the form of travel card dues in the amount of eight dollars per month,

8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union [2,072] pursuant to Section 2.05 of its Constitution and by-laws,

9. Whether or not payments to the fund were made by those affiliated with the union to the general exclusion of other classes of persons or organizations,

10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

14. Whether or not some persons who worked under the jurisdiction of Local 562 did not contribute to said fund,

15. Whether or not the monies of said fund were used in part to promote activities which were prohibited to Local 562 by its Constitution and By-Laws,

16. Whether or not said fund was established and maintained pursuant to the advice of counsel,

17. Whether or not the monies of said fund were reported to the Department of Labor on the LM-2 forms, which required the reporting of monies of Local 562.

18. Whether or not expenditures from the fund were under the control of the union and its officers,

[2,073] 19. Whether or not records used in the collection of the payments to the fund are similar to those employed

from time to time by the union in the collection of its regular dues and assessments.

If upon consideration of all the facts and circumstances in evidence you find that the contributions to the candidates for federal office for political purposes were in fact made out of union funds by the union, and that the individual defendants as officers of the union, willfully consented thereto, then you may take this fact into consideration together with other facts in evidence in determining whether there was a prior understanding or agreement so to do.

For your guidance and asistance, members of the jury, I shall now discuss the positions of the prosecution and the defendants in this case.

It is the position of the prosecution that early in 1963 the defendants in this case entered into a conspiracy to violate that section of the United States Code which prohibits a labor union from making contributions of its own funds to federal candidates. The Government contends that these defendants having previously consulted with counsel, were well aware of these provisions of the law and, desiring to evade the provisions of the law, and desiring to give their activities the appearance of legality, they created what was known as the [2,074] Pipefitters' Voluntary Political, Educational, Legislative, Charity and Defense Fund, and further that

This fund was designed by the defendants with the assistance of their counsel in an attempt to circumvent the law and to disguise and conceal the fact that the Union intended to and would systematically contribute to federal candidates.

It is the position of the defendants that they did not conspire to violate any law of the United States. It is further their position that the Political, Educational, Legislative, Charity and Defense Fund was created by certain union members of Local 562, after seeking advice of

counsel; that the fund was created for political, educational, legislative, charity and defense purposes, and for the promotion of the general welfare of all contributors to the fund; and that it was a fund separate and apart from Local 562.

If you find that defendants honestly and in good faith consulted an attorney as to what they might lawfully do in order to conform their actions in good faith to the requirements of Section 610, and fully and honestly presented all of the facts relating thereto to said attorney, and in good faith and honesty followed the advice of such attorney, relying upon it and believing it to be correct, and intending at all times that their acts and conduct shall be lawful, they could not be convicted of a crime which involves willful and unlawful intent [2,075] even if the advice given was an incorrect statement of the law.

On the other hand, if you find that defendants consulted the attorney in bad faith and with the view and purpose of circumventing the requirements of Section 610 and that it was their intent to set up a fund which would merely appear to be separate and distinct from the union, from which the union could make contributions to candidates for federal offices, then the fact that defendants obtained the advice of an attorney would not relieve them from the consequences of their conduct.

A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Education, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money.

In considering whether or not any defendant was a member of the alleged conspiracy, you must do so solely on the evidence concerning his own actions and conduct, and his own [2,076] connection with the actions and conduct of others. The guilt or innocence of each defendant must be separately considered and decided.

A criminal conspiracy is an offense distinct from the crime which is the alleged object of the conspiracy.

The gist of the offense with which defendants are charged is an unlawful agreement to violate Section 610 of Title 18, United States Code, and not any violation of that section which may have been done in pursuance of the conspiracy. Defendants are not on trial for any violation of Section 610, and the mere fact that the substantive offense may have been committed by one or more of the defendants, if you so find, would not in and of itself and without more prove the existence of the conspiracy.

Nevertheless, as you have been told, if you find from the evidence that the defendants, acting in concert, committed the offense described in Section 610, then such fact may be considered by you as one factor in determining whether there was a prior understanding and common design by the defendants to violate Section 610 by concerted action.

The essential elements which must be proved beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment as to each defendant are

First, That the conspiracy described in the indictment [2,077] was formed and existing at or about the time alleged,

Second, That such defendant knowingly and willfully became a member of the conspiracy,

Third, That one of the conspirators thereafter during the existence of the conspiracy knowingly committed at least one of the overt acts charged in the indictment, and

Fourth, That such overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

Unless the Government has sustained its burden of proving each of the foregoing elements of the offense charged, then you must acquit such defendant.

If you find from the evidence that the existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy at least one of the overt acts was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy as charged, then the offense of conspiracy has been proved as to every person found by you to have been knowingly and willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

You are instructed that as to each defendant the burden to prove the charge contained in the indictment is upon the Government; that burden the Government assumes in the [2,078] beginning and carries throughout to the end, and the Government can meet this burden only by showing to you the guilt of the defendant beyond a reasonable doubt.

The burden of proof, as you have been told, is upon the Government. Each defendant is presumed to be innocent until proven guilty. This presumption of innocence attends and protects the defendant throughout the trial unless it has been met and overcome by evidence coming forward in the case, and it make no difference from which side it comes, which shows and establishes the guilt of the defendant beyond a reasonable doubt.

The Court further charges you that a reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And, if, after an impartial comparison and consideration of all the evidence, you candidly can say that you are not satisfied of the defendant's guilt,

you have a reasonable doubt; and if, after such impartial comparison and consideration of all the evidence, you truthfully can say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt. Putting it another way, a reasonable doubt means a substantial doubt and not the mere possibility of innocence.

[2,079] The indictment charges that the defendants willfully conspired to have Local 562 make the contributions and to willfully consent to the making of such contributions.

In this connection you are instructed that if under the evidence and the other instructions you find the defendants, or any of them, guilty of willfully conspiring to do either or both of the acts which constitute a violation of Section 610, but find that said conspiracy did not contemplate a willful violation of Section 610, then your verdict of guilty should so state.

Unless otherwise specifically indicated, each instruction given should be considered by you as referring separately and individually to each defendant.

Members of the jury, it requires all twelve of your number agreeing to return a verdict. I have prepared two forms of verdict which will be handed to you by the bailiff when you reach the jury room. You will use only one of these forms. You must make a separate finding as to each defendant. You will use Form A to return a verdict of either guilty or not guilty of the offense charged. Form B may be used by you only in the event you find one or more of the defendants guilty of the wilful conspiracy charged and further find that the conspiracy of which said defendant is found guilty did not contemplate a willful violation of Section 610.

* * * * * * *

[2,080] (Thereupon the following proceedings were had out of the hearing of the jury:)

The Court: Let the record show that the defendants, and each of them, object and except to the action of the Court in refusing to direct a verdict at the conclusion of the Government's evidence, in accordance with their motions that are lettered "A", "B", "C", and "D", and they further object and except to the action of the Court in refusing to direct a verdict of judgment of acquittal at the conclusion of all the evidence, which motions are lettered "E", "F", "G", and "H".

They reiterate the objections they heretofore made to the charge at the time it was submitted to them in Court's chambers, and they reiterate their objections to the refusal of the Court to give their refused instructions, which are letter "I" to "ZZ".

* * * * * * * *

(To the Jury) Members of the Jury, the admonition that I have given you heretofore about not discussing this case is removed. I adjure you to discuss the case fully. You will be taken to the jury room now for your deliberation, and any communication that you want to have with the Court hereafter will be through the bailiff, who will be outside the jury room. The court will be in temporary recess.

* * * * * * * *

SEPARATE MOTION OF DEFENDANT PIPEFITTERS LOCAL UNION NO. 562 FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S CASE.

Comes now defendant Pipefitters Local Union No. 562 and at the close of the Government's case, moves the Court to withdraw the case from the jury, and to enter a judgment of acquittal in favor of this defendant, and for its grounds for this motion states:

1. The evidence introduced in this case is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between the allegations in the indictment and the proof offered.

JAMES F. NANGLE, JR.,
RICHARD L. DALY,
MURRY L. RANDALL,
NORMAN S. LONDON,
Attorneys for Defendant Pipefitters Local Union No. 562.

SEPARATE MOTION OF DEFENDANT CALLANAN FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S CASE.

Comes now defendant Lawrence L. Callanan and at the close of the Government's case, moves the Court to withdraw the case from the jury, and to enter a judgment of acquittal in favor of this defendant, and for his grounds for this motion states:

1. The evidence introduced in this case is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between the allegations in the indictment and the proof offered.

RICHARD L. DALY,
7 North Seventh Street,
St. Louis, Missouri 63101,
MAin 1-1701,
Attorney for Defendant Callanan.

SEPARATE MOTION OF DEFENDANT LAWLER FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S CASE.

Comes now defendant John L. Lawler and at the close of the Government's case, moves the Court to withdraw the case from the jury, and to enter a judgment of acquittal in favor of this defendant, and for his grounds for this motion states:

1. The evidence introduced in this case is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between the allegations in the indictment and the proof offered.

MURRY L. RANDALL,
506 Olive Street,
St. Louis, Missouri 63101,
MAin 1-1980,
Attorney for Defendant Lawler.

SEPARATE MOTION OF DEFENDANT SEATON FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S CASE.

Comes now defendant George Seaton and at the close of the Government's case, moves the Court to withdraw the case from the jury, and to enter a judgment of

acquittal in favor of this defendant, and for his grounds for this motion states:

1. The evidence introduced in this cause is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between the allegations in the indictment and the proof offered.

NORMAN S. LONDON,
418 Olive Street,
St. Louis, Missouri 63102,
CEntral 1-8700,
Attorney for Defendant Seaton.

SEPARATE MOTION OF DEFENDANT PIPEFITTERS LOCAL UNION NO. 562 FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE.

Comes now defendant Pipefitters Local Union No. 562 at the close of all the evidence and moves the Court to withdraw the case from the jury, and to enter a judgment of acquittal in its favor on each count of the indictment, and for its grounds for this motion states:

1. The evidence is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between the allegations in the indictment and the proof offered.

JAMES F. NANGLE, JR.,
RICHARD L. DALY,
MURRY L. RANDALL,
NORMAN S. LONDON,
Attorneys for Defendant Pipefitters
Local Union No. 562.

SEPARATE MOTION OF DEFENDANT CALLANAN FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE.

Comes now defendant Lawrence L. Callanan at the close of all the evidence and moves the Court to withdraw the case from the jury, and to enter a judgment of acquittal in his favor on each count of the indictment, and for his grounds for this motion states:

1. The evidence is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between the allegations in the indictment and the proof offered.

RICHARD L. DALY,
7 North Seventh Street,
St. Louis, Missouri 63101,
MAin 1-1701,
Attorney for Defendant Callanan.

SEPARATE MOTION OF DEFENDANT LAWLER FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE.

Comes now defendant John L. Lawler at the close of all the evidence and moves the Court to withdraw the case from the jury, and to enter a judgment of acquittal in his favor on each count of the indictment, and for his grounds for this motion states:

1. The evidence is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between the allegations in the indictment and the proof offered.

MURRY L. RANDALL,
506 Olive Street,
St. Louis, Missouri 63101,
MAin 1-1980,
Attorney for Defendant Lawler.

SEPARATE MOTION OF DEFENDANT SEATON FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE.

Comes now defendant George Seaton at the close of all the evidence and moves the Court to withdraw the case from the jury, and to enter a judgment of acquittal in his favor on each count of the indictment, and for his grounds for this motion states:

1. The evidence is insufficient to sustain a conviction.

2. There is a material and prejudicial variance between allegations in the indictment and the proof offered.

NORMAN S. LONDON,
418 Olive Street,
St. Louis, Missouri 63102,
CEntral 1-8700,
Attorney for Defendant Seaton.

[2,082] United States of America, Plaintiff,

vs.

[2,083] Lawrence L. Callanan, John L. Lawler, George Seaton, Defendants.

} 68 Cr 99 (3).

VERDICT.

We, the jury in the above entitled cause on the trial of the Indictment herein find as follows:

We find the defendant Pipefitters Local Union 562, guilty as charged in the indictment.

We find the defendant Lawrence L. Callanan guilty as charged in the indictment.

We find the defendant John L. Lawler guilty as charged in the indictment.

We find the defendant George Seaton guilty as charged in the indictment.

We further find that a willful violation of Section 610 of Title 18, United States Code, was not contemplated.

(Signed) ROBERT T. WEST,
Foreman.

Dated this 19 day of September, 1968.

Gentlemen of the Jury, the verdict as just read, is that your true verdict?

The Foreman: Yes, it is.

* * * * * * *

NOTICE OF APPEAL.

(Filed in U. S. District Court September 29, 1968.)

The parties taking the appeal are Pipefitters Local Union No. 562, Lawrence L. Callanan, John L. Lawler and George Seaton.

The judgment appealed from is the judgment and sentence in the above entitled cause which was entered by the United States District Court, Eastern District of Missouri, Eastern Division, by Judge Regan on September 27, 1968.

The Court to which the appeal is taken is the United States Court of Appeals for the Eighth Circuit.

RICHARD L. DALY,
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Attorneys for Defendant Pipefitters
Local Union No. 562.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,466.

United States of America,
Appellee,
v.
Pipefitters Local Union No. 562, etc., et al.,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

[June 8, 1970.]

Before VAN OOSTERHOUT, Chief Judge; BLACKMUN and HEANEY, Circuit Judges.

VAN OOSTERHOUT, Chief Judge.

Defendants Pipefitters Local Union No. 562, Lawrence L. Callanan, John L. Lawler and George Seaton were tried by a jury on indictment charging them with conspiracy under 18 U.S.C.A. § 371 to violate 18 U.S.C.A. § 610 which prohibits labor organizations from making contributions and expenditures to candidates for federal offices. Each defendant was found guilty by the jury. Under instructions given, the jury determined a willful violation of § 610 was not contemplated. The union was fined $5,000.

The individual defendants, who were officers of Local 562, were each sentenced to one year imprisonment and fined $1,000. All defendants have taken a timely appeal from their conviction and sentence.

As grounds for reversal, all defendants urge prejudicial errors were committed by the trial court in the following respects:

I. Failure to sustain defendants' motions for acquittal made at the close of the government's case and renewed at the close of all of the evidence based upon the grounds: (1) That the evidence introduced in the case was insufficient to sustain a conviction. (2) There was a material and prejudicial variance between the allegations of the indictment and the proof offered.

II. Failure to hold that § 610 as construed and applied by the court violates rights guaranteed defendants by the First, Fifth, Sixth and Seventeenth Amendments to the Constitution of the United States.

III. Failure to hold that the provision in the jury verdict that a willful violation of § 610 was not contemplated requires an acquittal of all defendants.

We affirm the convictions for the reasons hereinafter set out.

BACKGROUND.

Section 610 to the extent here pertinent reads:

> "It is unlawful for any . . . labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices. . . ."

The origin, legislative history and purpose of § 610 is discussed in detail in *United States* v. *C.I.O.*, 325 U.S. 106, and in *United States* v. *International Union*, 352 U.S. 567. It is pointed out that Congress in 1907 enacted a statute making it unlawful for any corporation to make a money contribution in connection with an election for federal office in furtherance of the public interest for free elections. Such prohibition was later extended to labor organizations and this legislation in its present form is found in § 610. With respect to corporations, the Court in *United States* v. *C.I.O.* states:

> "This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders." 335 U.S. 106, 113.

With respect to extending the legislation to labor organizations, the Court in the same case observes:

> "Its legislative history indicates congressional belief that labor unions should then be put under the same restraints as had been imposed upon corporations. It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." 335 U.S. 106, 115.

Mr. Justice Rutledge, in reviewing the legislative history of the extension of the Corrupt Practices Act to labor organizations, indicates:

> "[I]n one important respect the history again is clear, namely, that the sponsors and proponents had in mind three principal objectives.

"These were: (1) To reduce what had come to be regarded in the light of recent experience as the undue and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections and of official conduct ensuing from the choices made in them against the use of aggregated wealth by union as well as corporate entities; and (3) to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views. Shortly, these objects may be designated as the 'undue influence,' 'purity of elections,' and 'minority protection' objectives. These are obviously interrelated, but not identical. And the differences as well as their combination become important for deciding the scope of the section's coverage and its validity in specific application." 335 U.S. 106, 134-35.

THE MOTIONS TO ACQUIT.

Defendants' timely motions to acquit were based on two grounds: (1) A material variance between the allegations of the indictment and the proof, and (2) the insufficiency of the evidence to support the convictions. Defendants urge that the indictment was insufficiently clear with respect to the source of the funds used in the conspiracy charge. Such contentions lack merit.

The indictment is lengthy and elaborate. Sixty-one overt acts are charged. The indictment charged that the defendants established the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund, hereinafter called the fund, to have the appearance of being a wholly independent entity separate from Local 562 and thereby conceal the fact that Local 562 would make contributions and expenditures in connection with certain elections. The indictment outlined defendants' complicated scheme to conceal the true nature of their activity and concluded by

alleging that such activity amounted to an unlawful use of union funds contrary to § 610.

In *United States* v. *Lewis Food Co.*, 9 Cir., 366 F.2d 710, 713, the court holds, "the allegation in the indictment that the corporation made an 'expenditure' for the stated purpose, necessarily infers an allegation that general corporate funds were used."

The failure of the indictment to allege that the payments to the fund were involuntary is not fatal. The gist of the government's claim as reflected by the indictment is that the money in the fund is in truth and in fact money belonging to Local 562.[1] If such allegation is established by the evidence, the issue of whether the payment to the fund is voluntary or involuntary is not controlling.

Of course as observed by the court in its instructions, the issue of whether the payments to the fund were voluntary is relevant and material on the issue of whether the

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[1] While instructions given by the court to the jury are not relevant or controlling in determining the law to be applied in ruling upon motions for acquittal, it appears extremely likely that the court would apply the law as set forth in its instructions in passing upon the motions. Included in the instructions is the following:

"You will note that Section 610 prohibits contributions by labor organizations for use in connection with an election for a federal office. It does not prohibit any person from making or agreeing to make such contributions or setting up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization. That is, the statute is not violated unless the [2,070] contribution is in fact and in the final analysis made by the labor organization.

"In this case evidence was offered by the Government to the effect that funds were contributed to or on behalf of candidates for federal office and that such funds were paid out upon checks drawn upon the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund. It is necessary, therefore, that the evidence establish that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was in fact a union fund, that the money therein was union money, and that the real contributor to the

fund is the property of Local 562. Other considerations such as the intention of the donors as to ownership and control of the fund also bear upon the issue.

We now pass to the issue of the sufficiency of the evidence to support the convictions. The evidence must be viewed in the light most favorable to the party prevailing in the jury trial, here the government. *Glasser* v. *United States,* 315 U.S. 60, 80. When the evidence is so viewed, we find ample evidentiary support for the jury verdict.

The essential elements of a § 610 offense are (1) contribution or expenditure, (2) by a labor organization, (3) for the purpose of active electioneering (4) in connection with an election for named federal offices described in the statute. It is virtually undisputed that elements (1), (3) and (4) are clearly established. The controversy relates to whether the contributions or expenditures were made by a labor organization. A labor organization is defined in § 610. Local 562 clearly fits the description of

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candidates was the union. As to this issue, the defendants contend that the fund in question was a bona fide entity separate and apart from the Union, established by the voluntary good faith act of members of the pipefitters Local 562 and others, from which contributions to candidates were made on behalf of the persons who created the fund and not on behalf of the union. On the other hand, the Government contends that the fund was a mere artifice or device set up by the defendants and others as a part of the alleged conspiracy to give the outward appearance of being an independent and separate entity but in fact constituting a part of union funds.

* * * * * * * *

"A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

a labor organization. Thus if the numerous substantial contributions made to federal office candidates were made by Local 562, the contributions were made by a labor organization. On the other hand if the voluntary fund is a separate and distinct entity and it made the contributions, no violation of § 610 would exist as the voluntary fund as a separate entity would not constitute a labor organization.

Contributions alleged to be voluntary by members of Local 562 and members of other unions working within its jurisdiction aggregating $1,230,968 were made during the indictment period (1963-1968). The proceeds of such collections were maintained in a separate bank account of the fund. Disbursements out of the fund for aid of candidates for federal office during the indictment period aggregated $151,412. There is substantial evidence to support a jury finding that the fund was not a bona fide separate and distinct entity but was in fact a device set up to circumvent the provisions of § 610 and that the fund constituted union money. We will not attempt to set out the voluminous evidence, much of which is conflicting, in detail. Assessments had been made for the political fund since 1949. In 1962, the assessment for the fund for members of Local 562 and those working within its jurisdiction was 50¢ per man for each day worked. Local 562 abandoned collections through assessments in 1963.

In 1962, the union launched a campaign for check off of dues by employers of its members. Originally it was contemplated, as shown by the union minutes, that the check off be for 4% of the wages paid plus dues with 1½% included in the 4% going to the fund.

The local deliberately kept its membership relatively small so that advantageous employment would be available at all times for its members. It had jurisdiction over work covering a large part of the state of Missouri. Local 562

provided a considerable amount of work for members of other locals at more favorable rates of pay than prevailed in the jurisdiction of the locals. The attorney for the union advised the union that he was fearful that if Local 562 accepted dues and assessments from non-members it would be required to accept them into membership in Local 562. He also recommended that the contribution to the fund not be collected by check off and that voluntary pledge cards for the fund be obtained from those working on Local 562 projects and that the funds be raised through voluntary contributions. Thereafter Local 562 voted to reduce the assessment from 4% to 2½% of the wages and further that no assessments be made against non-members. Signatures of non-members and members working on Local 562 projects were obtained on voluntary contribution cards under which the signers who were members of Local 562 agreed to contribute $1.00 per 8 hour working day to the fund, with non-members agreeing to contribute $1.50 per 8-hour day. The extra 50¢ per day for non-members was equivalent to the cancellation of the 50¢ per day assessment which was abandoned. Subsequently the contribution of non-members was raised to $2.00 per working day.

When the assessment of members was raised in 1966 from $1.00 to $1.50 per day, contributions to the voluntary fund were reduced from $1.00 to 50¢ per day leaving the total combined assessment and contribution to the voluntary fund in the same total figure as previously existed.

The non-members of Local 562 working on its projects were not charged the customary $8.00 per month travel card assessment. However, their contribution to the fund substantially equalled the combined assessment and voluntary contribution made to the fund by members.

The contributions to the fund were generally collected regularly by the foreman on the job site in substantially the same manner in which assessments had previously

been collected. Collection sheets were provided with columns containing the names of the employees, the number of hours worked and the amount paid to the fund. The purpose of keeping the records was so that the officers would know who contributed to the fund and how much. Reasons such as sickness or vacation were placed on the report sheet with respect to persons from whom no assessment was collected for the period covered. On some reports reference is made to back assessments.

A number of foremen testified that they did not know what would happen if the contribution was not paid because all of the members working under them regularly made payments to the fund.

There is evidence that a limited number did not make a contribution to the fund and that no reprisals were taken against them. Ordinarily such failure to pay was taken up with the union officials and instructions were received by the collectors not to press for payment. There is also testimony that the people working on the projects considered their employment advantageous and felt that they had no choice except to make the contribution. It would appear to be unrealistic to believe that such a large number of workmen would make such substantial voluntary contributions to be used for political purposes unless they felt that their job security required them so to do.

The union received national recognition because of its general political contributions. The minutes of the local meeting of June 9, 1964, reflect that the union president had been introduced to President Johnson as "the representative of the most active political membership in the United States."

The fund was freely used for making payments to serve many other union purposes. We are satisfied that all of the essential elements of conspiracy charged are supported by substantial evidence.

CONSTITUTIONAL ISSUES.

Substantial and difficult problems are presented by the constitutional issues raised by the defendants. A minority of the Court in *United States* v. *C.I.O.*, supra, and *United States* v. *International Union*, supra, expressed the view that § 610 was unconstitutional. The majority by reason of its interpretation of the statute did not reach the constitutional issue. We shall treat separately the constitutional issues raised.

A. FIRST AMENDMENT.

It is clear that the First Amendment protects the freedom of association, *NAACP* v. *Alabama*, 357 U.S. 449, and that the activities of a labor union are within the scope of this protection. *United Mine Workers* v. *Illinois State Bar Ass'n*, 389 U.S. 217. Since 18 U.S.C.A. § 610 regulates the activities of a labor union, it must be evaluated in light of First Amendment principles.

Finding that particular activities are within the purview of the First Amendment does not necessarily mean that they are free from governmental regulation. The rights of association are not absolute and may be regulated by the government in certain instances. *Dennis* v. *United States*, 341 U.S. 494; *Garner* v. *Board of Public Works*, 341 U.S. 716.

In order to determine the validity of governmental regulation which touches constitutionally protected rights, the Court in *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 51, indicated that "that perforce requires an appropriate weighing of the respective interests involved." Therefore, a court must balance the interest of the government in the regulation against the interest of the individual and the organization in their freedom of association. Since the value of the freedom of association is considered

extremely high in our society, if a governmental regulation of association is to prevail against constitutional attack, the government must demonstrate a "compelling" interest in the regulation in question. See *Bridges* v. *California*, 314 U.S. 252; Cf. *Sherbert* v. *Verner*, 374 U.S. 398. Therefore, in order to determine the validity of 18 U.S.C.A. § 610, the court must find a compelling governmental interest which overrides the interest of the association in the activities prohibited. There is such a compelling interest. Since it is possible for a person to be required to join a union as a condition of employment, one of the purposes for the passage of 18 U.S.C.A. § 610 was to "protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views." Mr. Justice Douglas concurring in *International Association of Machinists* v. *Street*, 367 U.S. 740, thought this to be an extremely troublesome problem. He said:

> "[M]embership in a group cannot be conditioned on the individual's acceptance of the group's philosophy. Otherwise, First Amendment rights are required to be exchanged for the group's attitude, philosophy or politics. I do not see how this is permissible under the Constitution." 367 U.S. 740, 777.

Congress in passing 18 U.S.C.A. § 610 was attempting to protect the individual union member's right to his own political views and the right to support or not to support them through money contributions. In light of the substantial interest each individual has in his own political activities, it follows that Congress in passing the legislation was responding to a compelling interest.

Even when it is found that the government has acted to protect a compelling interest, the First Amendment requires further analysis. To this point the Court in *Shelton* v. *Tucker*, 364 U.S. 479, 488, said:

"In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be narrowly achieved. The breadth of legislative abridgement must be viewed in light of less drastic means for achieving the same basic purpose."

The issue under this analysis is whether 18 U.S.C.A. § 610 narrowly achieves the legitimate Congressional purpose without needlessly treading on constitutional rights.

When § 610 is given the interpretation previously discussed in this opinion, it does not go beyond protecting the valid governmental interest and infringe unnecessarily on constitutional rights. Separate voluntary political associations by union members are not in any way proscribed by the statute. Therefore, § 610 is not unconstitutional under the First Amendment.

B. VAGUENESS.

It is of course necessary to evaluate § 610 in relation to the concept of constitutional vagueness. This principle was set out in *United States* v. *Harriss*, 347 U.S. 612, 617, where the Court said:

"The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

The Court in *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 287, added:

"The vice of unconstitutional vagueness is further aggravated where, . . . the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution."

The vagueness problem therefore is whether a person could know from reading § 610 what is proscribed by its terms.

One matter which was previously pointed out was that substance rather than form governs the question of whether a particular contribution or expenditure came from a "labor organization." Such approach requires a court or jury to evaluate the totality of the circumstances and determine who in fact made the contribution or expenditure—a separate and distinct organization or a § 610 labor organization. The legality of the conduct of a labor organization making contributions or expenditures is not difficult to determine. A labor organization can predict what its officials and employees may do by evaluating the organization's duty under § 610 and not allow its officials and employees to engage in conduct which is inconsistent with this duty.

C. DUE PROCESS—EQUAL PROTECTION.

The due process clause of the Fifth Amendment includes within it a concept of equal protection. *Bolling* v. *Sharpe*, 347 U.S. 497. Therefore, the federal government, as well as the states, is not allowed to pass legislation which makes arbitrary classifications. The appellants argue that § 610 makes an arbitrary classification because it prevents members of the working class from political action whereas members of richer classes are not so prohibited, even though banks and corporations are also prohibited from making political contributions and expenditures. The argument is that the corporate executives personally make political contributions which have an impact on the political process, and § 610 prohibits members of the working class from aggregating their funds to have a similar impact. The problem with this argument is that § 610 does not prohibit working men from such activity. Section

610 only prohibits them from being forced into it. Therefore, § 610 does not create a classification which is subject to an equal protection claim.

D. RIGHT TO VOTE FOR SENATORS AND REPRESENTATIVES.

It has been argued that § 610 abridges the right to vote for Congressmen and Senators. This argument is based on the assumption that § 610 prohibits any labor group from associating and engaging in political activities. As previously pointed out this is not the proper construction of § 610. When § 610 is given the interpretation as described in this opinion, this argument totally lacks merit.

EFFECT OF JURY FINDING THAT A WILLFUL VIOLATION OF § 610 WAS NOT CONTEMPLATED.

The signed jury verdict Form B returned by the jury found each defendant guilty as charged in the indictment and then went on to say, "We further find that a willful violation of Section 610 of Title 18, United States Code, was not contemplated."

Defendants urge that the quoted sentence requires an acquittal on the conspiracy charge. We do not agree.

Verdict Form B together with Form A finding the defendants guilty without containing the sentence hereinabove quoted were submitted to the court under an instruction that "Form B may be used by you only in the event you find one or more of the defendants guilty of the willful conspiracy charged and further find that the conspiracy of which said defendant is found guilty did not contemplate a willful violation of § 610."

Section 610 carries a penalty of a fine not to exceed $5000 for a corporation or labor organization and not to

exceed $1000 or one-year imprisonment for individual defendants. The statute further provides that if the violation was willful the penalty is a fine up to $10,000 and imprisonment up to two years. Eighteen U.S.C.A. § 371 under which defendants were tried and convicted contains a provision that if the offense, the commission of which is the object of the conspiracy is a misdemeanor only, the punishment shall not exceed the maximum imposed for the misdemeanor. Eighteen U.S.C.A. § 1 defines a misdemeanor as an offense carrying a penalty of one year or less imprisonment. Thus it would appear that the clear purpose of the instruction and verdict Form B was to advise the court whether defendants were guilty of conspiracy to commit a misdemeanor or a felony for the purpose of guiding the court in assessing a permissible penalty.

The court in its instructions properly set forth the elements of the conspiracy including the necessity of proving that each defendant knowingly and willfully participated in the conspiracy to violate § 610. Included in the instructions is the following:

> "The crime charged in this case requires proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the Government must prove that the defendant knowingly, willfully and purposely did an act which the law forbids. Such intent may be determined from all the facts and circumstances shown by the evidence.
>
> * * * * * * * *
>
> "An act is done 'willfully' if done voluntarily and purposely and with the specific intent to do that which the law forbids; that is to say, with bad purpose either to disobey or to disregard the law."

The necessity of proving willfulness as an element of the conspiracy is repeated in various places in the instructions.

When the verdict is read in the light of the applicable law and the court's instructions, we are satisfied that the jury by its verdict intended to and in fact did convict the defendants of the conspiracy charged.

It is also of some significance that the defendants took no exception to verdict Form B or the instructions relating to its submission. Defendants were in no way prejudiced by the submission of Form B. The jury finding in the last sentence of the form in reality amounted only to a finding that the conspiracy related to a misdemeanor rather than a felony and defendants were thus benefited by such finding by being exposed only to the lesser sentence provided in § 371 for conspiracy, the object of which is a misdemeanor.

Defendants have made no attack on this appeal upon any instructions given by the trial court or to the evidentiary rulings. We conclude that the defendants have had a fair trial and that they have failed to establish that the court has committed any prejudicial error.

The judgments appealed from are affirmed.

HEANEY, Circuit Judge, dissents and reserves the right to file a dissenting opinion setting out his views.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,466.

United States of America,
Appellee,
v.
Pipefitters Local Union No. 562, etc., et al.,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

[July 17, 1970.]

Before VAN OOSTERHOUT, Chief Judge; BLACKMUN and HEANEY, Circuit Judges.

HEANEY, Circuit Judge, dissenting.

While I share the view of the majority that the indictment was not fatally defective, I would reverse and reman to the trial court with instructions to it to grant the defendants a new trial. See, *United States* v. *Lewis Food Company*, 366 F.2d 710 (9th Cir. 1966).[1] At this new

[1] "All that is required of an indictment is that it be a plain, concise and definite written statement of essential facts constituting the offense charged. Rule 7(c), Federal Rules of Crim-

trial, the principal question would be whether, in the light of all the evidence, the contributions to the federal candidates were made from funds which could fairly be said to have been voluntarily contributed by members and non-members with knowledge of the fact that all or part of their contribution would be used for political purposes. See, *United States* v. *International Union*, 352 U.S. 567, 592 (1957); 93 Cong. Rec. 6437-6440 (1947).

There is evidence in this record indicating that the contributions to the Pipefitters' fund were, in the above sense, knowingly and voluntarily made. There is also substantial evidence to the contrary. But the jury was specifically instructed that it could find the defendants guilty even if it believed all of the contributions were voluntarily made.[2] Such an instruction was, in my view, erroneous.

The government acknowledges in its brief that a union acting through its officers, agents and members may form

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inal Procedure; *Rood* v. *United States*, 8 Cir., 340 F.2d 506, 510. With respect to the use of general corporate funds this indictment meets these requirements. Entry of the plea of not guilty, therefore, gave rise to a question of fact as to the source of the corporate funds. When the Supreme Court, in the *Auto Workers* case, asked (352 U.S. at 592, 77 S.Ct. at 542): '[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?' The Court was referring to questions of fact which must be resolved at the trial level and was not referring to any inadequacies in the indictment." *United States* v. *Lewis Food Company*, 366 F.2d 710, 713 (9th Cir. 1966).

[2] "A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

a political organization parallel to the union and use union personnel to solicit and spend direct voluntary contributions for federal elections. It concedes that COPE and countless other political action groups have been so organized and operated. The difficulty with this acknowledgement is that it comes too late. The trial court, although requested to, refused to give an instruction embodying this concept. Indeed, the thrust of its direction was that the very participation of union officers and agents in the organization and operation of the political fund was evidence of impropriety. Compare, *Machinists Union* v. *Street*, 376 U.S. 70 (1961).

The government contends in its brief that the contributions to the fund were in fact assessments, were in fact part of the general dues' structure and were in fact involuntarily made. These may indeed be the facts and if the jury had made such a finding, a violation of Section 610 would have been made out. But again, this the jury was not requested to so find. It was instructed to answer the broader question of whether the contributed funds constituted a part of the Union funds. Nineteen facts and circumstances were listed as bearing on the answer to this question.[3] Some of the facts and circumstances were rele-

[3] "1. Whether or not payments to the fund were routinely made at regular intervals at job sites,

"2. Whether or not payments to the fund were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union,

"3. Whether or not the payment to the fund was determined by a formula based upon the amount of hours or overtime hours worked upon a job under the supervision of the union,

"4. Whether or not payments to the fund were at one rate for 562 members and at a different rate for members of other unions,

"5. Whether or not payments to the fund began, continued and terminated with employment on a job under the jurisdiction of the union,

"6. Whether or not monies of the fund were used to provide benefits to union members in their capacity as members,

vant to the issue of knowledge and voluntariness and others, irrelevant. One example of the latter was the instruction that the jury could consider whether the payments to the fund were routinely collected by the Union Stewards and agents of the Union at the job site.

The government further contends that the political funds were spent by the individual defendants arbitrarily and without consultation with the contributors. There is

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"7. Whether or not payments to the fund by members of other unions were in lieu of payments to the union in the form of travel card dues in the amount of eight dollars per month,

"8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union pursuant to Section 2.05 of its Constitution and by-laws,

"9. Whether or not payments to the fund were made by those affiliated with the Union to the general exclusion of other classes of persons or organizations,

"10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

"11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

"12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

"13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

"14. Whether or not some persons who worked under the jurisdiction of Local 562 did not contribute to said fund,

"15. Whether or not the monies of said fund were used in part to promote activities which were prohibited to Local 562 by its Constitution and By-Laws,

"16 Whether or not said fund was established and maintained pursuant to the advice of counsel,

"17. Whether or not the monies of said fund were reported to the Department of Labor on the LM-2 forms, which required the reporting of monies of Local 562,

"18. Whether or not expenditures from the fund were under the control of the union and its officers,

"19. Whether or not records used in the collection of the payments to the fund are similar to those employed from time to time by the union in the collection of its regular dues and assessments."

some evidence in the record to support this contention. Although such a practice is of questionable legality and is undesirable and undemocratic, it constitutes no violation of Section 610.

The argument is also made by the government that at least one official of the fund diverted a portion of the funds collected for political purposes to his personal use. While this act may also have been illegal and reprehensible, it was not a violation of the statute.

Finally, the government contends on appeal that the fund was used to provide benefits to some of the members of the Union. There is again evidence in the record to support this contention, but the fact of the matter is that the fund was established for educational, legislative, charitable and defense as well as political purposes. And as I read Section 610, there is nothing in it which prohibits a union, its officers and agents from soliciting voluntary contributions for political and other purposes so long as those contributing know that all or part of the funds will be used in support of political candidates.

Nothing I have said in this opinion should be taken to indicate that a union or its officers and agents can evade the prohibitions of Section 610 by obtaining contribution cards from contributors indicating that the contributions were voluntarily made for political purposes. The test is whether the contributions are, in fact so made.

Because I would remand for a new trial, I find it unnecessary to pass on the First Amendment validity of Section 610. This issue can be reached if the defendants are convicted under proper instructions.

I likewise express no view on the question of whether the jury's finding that a willful violation of Section 610 was not contemplated by the defendants required a re-

versal on the conspiracy charge. I am confident that on retrial, the verdict forms would eliminate this ambiguity.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

Area Code (314)
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Murry L. Randall
Attorney
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August 26, 1970

Mr. Robert C. Tucker
Clerk, U.S. Court of Appeals
for the 8th Circuit
Federal Building
12th and Market Streets
St. Louis, Missouri 63101

Re: No. 19466
U. S. A., Appellee

v.

Pipefitters Local Union
No. 562, etc., et al.,
Appellants

Dear Mr. Tucker:

The appellants hereby request permission to file a supplemental brief in the above case in connection with the rehearing of the case by the count en banc. It is not our intention to rebrief the issues covered in our original brief but rather to deal supplementally with the issue considered by the dissent in the division decision. We would also

request until Friday, September 18, 1970, for time to file such supplemental brief.

Yours very truly,

/s/ Murry L. Randall
Murry L. Randall

MLR:mg

cc—Mr. Daniel Bartlett, Jr.
U. S. Attorney
Mr. Edgar M. Brown
Attorney, Criminal Division
Department of Justice

United States Court of Appeals
For the Eighth Circuit
St. Louis, Mo. 63101

September 10, 1970

Robert C. Tucker, Clerk

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Mr. Edgar N. Brown, Attorney
Department of Justice
Washington, D. C. 20530

Re: No. 19466. United States v. Pipefitters Local Union No. 562, etc., et al.

Dear Sirs:

Reference is made to the Court's order of August 19, 1970, vacating our previous judgment and reinstating the

case on our calendar. I am directed by the Court to inform counsel that this appeal is to be submitted to the Court en banc on Wednesday, October 14, 1970, at 9 a.m.

Counsel for appellants may have to and including September 22, 1970, in which to file any additional briefs thought appropriate and counsel for appellee, United States, may have to and including October 1, 1970, in which to file additional brief.

Any subsequent briefs may be in typewritten form on lettersize paper and fastened in the left margin. I will need an original and seven copies of typewritten briefs which should, of course, be served on opposing counsel.

Very truly yours,

Robert C. Tucker,
Clerk

RCT:lp

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,466.

United States of America,
Appellee,
v.
Pipefitters Local Union No. 562, etc., et al.,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri Upon Rehearing in Banc.

[November 24, 1970.]

Before MATTHES, Chief Judge; VAN OOSTERHOUT, MEHAFFY, GIBSON, LAY, HEANEY and BRIGHT, Circuit Judges.

PER CURIAM.

On June 8, 1970, the conviction of Pipefitters Local Union No. 562, Lawrence L. Callanan, John L. Lawler and George Seaton on a charge of conspiracy under 18 U.S.C.A. § 371 to violate 18 U.S.C.A. § 610, which makes it unlawful for a labor organization to make a contribution or expenditure in connection with any election to federal office, was affirmed by a panel of this court consisting of Judges Van Oosterhout, Blackmun and Heaney. Judge Heaney filed a dissent. The opinion is reported at ... F.2d ....

Thereafter on August 19, 1970, a rehearing in banc was granted by a majority vote of the active judges of this court and the judgment affirming the conviction was vacated and set aside. The court in banc on October 14, 1970, heard this case.

The judgments of conviction and sentences imposed are affirmed for the reasons set out in the panel majority opinion filed June 8, 1970. Judgment shall be entered accordingly. Affirmed.

MATTHES, Chief Judge, with whom Judges VAN OOSTERHOUT, MEHAFFY and GIBSON join, concurring.

I join in the affirmance of the judgment of conviction. The course traveled by this appeal in this court, as a result of my brother Heaney's dissenting opinion, motivates me to express my views in regard to procedural aspects of an appeal in the hope that this court, whether sitting en banc or as a panel, hereafter will adhere to what I regard to be deeply entrenched principles applicable to the consideration and disposition of cases by courts of appeals.

From the outset of this case appellants challenged the constitutionality of 18 U.S.C § 610 and sought dismissal of the indictment on that ground. The validity of the statute was a live issue throughout the trial. Additionally, at trial appellants requested an instruction submitting the issue of voluntariness, and objected to the instruction which made reference to this question. See Footnote 2, Judge Heaney's dissenting opinion, reported at ... F.2d ... (8th Cir. 1970). Thus, there can be no doubt that appellants laid the proper foundation in the district court for challenging on appeal the propriety of the submission of the case to the jury. But appellants, represented by a battery of retained counsel, experienced and skilled in the defense of criminal cases, on appeal abandoned all errors

asserted during the trial and elected to proceed in this court by presenting only issues for review designed to bring about an outright reversal and discharge of the appellants.

Appellants' initial exhaustive brief, consisting of 98 pages, stands as irrefutable evidence that they were consciously and purposefully foregoing any relief on the ground of trial irregularities. Manifestly, they were familiar with the provisions of Rule 28(a), Federal Rules of Appellate Procedure, relating to the contents of the brief of an appellant, and included in their brief a "Statement Of Issues Presented For Review." These issues summarized were:

I. The indictment failed to allege an offense under 18 U.S.C. § 610;

II. Section 610 is unconstitutional because it abridged appellants' and all union members First Amendment rights;

III. Section 610 is unconstitutional because of vagueness;

IV. Section 610 deprives unions and its members of liberty and property without due process, in violation of the Fifth Amendment;

V. Section 610, as construed and applied by the district court, unlawfully abridges the rights of appellants to vote and to choose their senators and representatives in Congress as guaranteed by Article I, Section 2 and the Seventeenth Amendment to the Constitution;

VI. The verdict of the jury negating a willful violation of § 610 required an acquittal on the conspiracy charge.

In the expansive development of the foregoing issues in the argument portion of appellants' brief, there is no hint or suggestion of error in giving or rejecting instructions.

And to remove any doubt as to the precise relief sought by appellants in this court they concluded their brief with this statement:

"CONCLUSION.

For each of the reasons stated herein above, we respectfully submit that the judgment below should be reversed. Each of said reasons requires a reversal without a new trial, and no request is made for a new trial. The relief sought, and impelled by said reasons, is a reversal and discharge of the defendants."

The majority of the original panel, which affirmed, squarely met and considered the issues presented by appellants. But, notwithstanding the obvious, namely, that appellants had deliberately and consciously elected to abandon and waive any and all claims of prejudicial trial errors, my brother Heaney, sua sponte, injected an issue foreign to appellants' brief, faulted the district court for not properly instructing the jury as to whether the contributions to candidates had been voluntarily made, and voted to remand for another trial.

The rules designed to govern appellate procedure clearly delineated in the Federal Rules of Appellate Procedure, and sanctioned by many decisions, convinces me that a court of appeals should confine its review to the issues which an appellant properly raises and presents in his brief. Certainly, the reviewing court should not assume the role of an advocate and engage in the practice of ferreting out errors deliberately and consciously abandoned by an appellant, in order to grant relief not asked for, but in fact specifically disclaimed. Such gratuitous procedure by the reviewing court does not, in my view, comport with the proper and orderly administration of justice.

The salutary purpose of Rule 28(a)(2), Federal Rules of Appellate Procedure, providing that the brief of an

appellant shall contain "[a] statement of the issues presented for review"[1] and of pre-1968 local rules of this court, has been spelled out in meaningful language. This court, speaking through Judge Kimbrough Stone, stated, "[t]he purpose of the rule is to definitely and separately point out the errors complained of in order to clearly *define* and *confine* the issues on appeal." (Emphasis supplied). *New York Casualty Co.* v. *Young Men's C. Assn.*, 119 F.2d 387, 389 (8th Cir. 1941); Accord, *Cohen* v. *United States*, 142 F.2d 861, 863 (8th Cir. 1944); *Turner County S.D.* v. *Miller*, 170 F.2d 820, 828 (8th Cir. 1948);[2] *Mogis* v. *Lyman-Richey Sand & Gravel Corp.*, 189 F.2d 130, 133;[3] *Chain Institute* v. *Federal Trade Commission*, 246 F.2d 231, 235 (8th Cir. 1957); *Bell* v. *United States*, 251 F.2d 490, 493-94 (8th Cir. 1958).[4] In *McIntosh* v. *United States*, 362 F. 2d 636 (8th Cir. 1966), Judge Blackmun, now an Associate Justice of the Supreme Court, reiterated that specifications of error not urged in brief or appeal are abandoned. Finally, in *Smith* v. *American Guild of Variety Artists*, 368 F. 2d 511, 514 (8th Cir. 1966), Judge Van Oosterhout again recognized the rule and supported the court's refusal to consider a point not raised or briefed with numerous citations. But see *Laclede Gas Co.* v. *N.L.R.B.*, ... F.2d ... (8th Cir. 1970),[5] where Judges Heaney and Lay remanded the case to the National Labor Relations Board for consideration of an issue not raised on appeal. Judge Van Oosterhout dissented on the ground

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[1] The Federal Rules of Appellate Procedure became effective July 1, 1968.

[2] This case holds that an unargued assertion of error is waived.

[3] This case stands for the proposition that contentions of error in the trial court not presented on appeal will be considered as having been abandoned.

[4] In the *Bell* case, Judge Van Oosterhout cites numerous cases supporting the rule.

[5] This case did not present any constitutional issues.

that since the issue was not raised the cause should not be remanded.

I am not unmindful that the United States Supreme Court has established the principle that "[i]f two questions are raised, one of non-constitutional and the other of constitutional nature, and a decision of the non-constitutional question would make unnecessary a decision of the constitutional question, the former will be decided." *Alma Motors Co.* v. *Timken-Detroit Axle Co.*, 329 U.S. 129, 136, 67 S.Ct. 231, 91 L.ed. 128 (1946); *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 347 (Brandeis, J., concurring); *Clay* v. *Sun Insurance Office*, 363 U.S. 207 (1959).[6] Nor am I unaware of the practice of the Supreme Court of refusing to decide constitutional questions when other grounds of decision can be found in the *record*, whether or not they have been properly raised before the court by the parties. *Neese* v. *Southern Ry.*, 350 U.S. 77 (1955); *Communist Party of U.S.* v. *Subversive Activities Control Bd.*, 367 U.S. 1, 119-20 (1961) (Douglas, J., dissenting).

But, notwithstanding this principle, and with due deference to the teachings of the Supreme Court, the conclusion is inescapable that the practice and procedure in the United States courts of appeals are governed by the Federal Rules of Appellate Procedure.

It is known generally by the federal bench and the members of the legal profession that for a number of years many judges, lawyers and legal scholars recognized a compelling need for uniform rules to govern the practice and procedure in the United States court of appeals. The Committee on Rules of Practice and Procedure of the

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[6] In Clay, Justice Black states that the principle has never been made a rule and elevated to a position of absoluteness but its application is merely discretionary, to be used under the proper circumstances. 363 U.S. at 222-26 (dissenting opinion).

Judicial Conference of the United States, after lengthy, responsible and deliberate study and consideration, culminated its efforts, and on December 4, 1967, the Supreme Court of the United States, by appropriate order, adopted the Federal Rules of Appellate Procedure. The Supreme Court, in its order of adoption, provided that these rules are to govern the practice in appeals to United States courts of appeals from the United States district courts, and the review of the United States courts of appeals of decisions of specified lower federal agencies. Rule 1 provides that "these rules govern practice in appeals to United States courts of appeals from the United States district courts and the Tax Court of the United States; . . . ."

Thus, the conclusion is inescapable that the Supreme Court has decreed through adoption of the rules that all appeals in the courts of appeals are to be governed by the provisions of the Federal Rules of Appellate Procedure. These rules are easily understood. They mean what they say. They are binding upon every judge of every court of appeals and should be adhered to, not ignored. If courts of appeals are permitted to engage in fashioning remedies according to the dictates of the judges and contrary to the guidelines enunciated in the rules, one of the objectives so long sought and finally achieved—*uniformity of practice and procedure*—will effectively be scrapped.

HEANEY, Circuit Judge, dissenting.

While I share the view of the majority that the indictment was not fatally defective, I would reverse and remand to the trial court with instructions to it to grant the defendants a new trial. See, *United States* v. *Lewis Food Company*, 366 F.2d 710 (9th Cir. 1966).[1] At this

[1] "All that is required of an indictment is that it be a plain, concise and definite written statement of essential facts con-

new trial, the principal question would be whether, in the light of all the evidence, the contributions to the federal candidates were made from funds which could fairly be said to have been voluntarily contributed by members and nonmembers with knowledge of the fact that all or part of their contributions would be used for political purposes. See, *United States* v. *International Union*, 352 U.S. 567, 592 (1957); 93 Cong. Rec. 6437-6440 (1947).

There is evidence in this record indicating that the contributions to the Pipefitters' fund were, in the above sense, knowingly and voluntarily made. There is also substantial evidence to the contrary. But the jury was specifically instructed that it could find the defendants guilty even if it believed all of the contributions were voluntarily made.[2] Such an instruction was, in my view, erroneous.

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stituting the offense charged. Rule 7(c), Federal Rules of Criminal Procedure; Rood v. United States, 8 Cir., 340 F.2d 506, 510. With respect to the use of general corporate funds this indictment meets these requirements. Entry of the plea of not guilty, therefore, gave rise to a question of fact as to the source of the corporate funds. When the Supreme Court, in the *Auto Workers* case, asked (352 U.S. at 592, 77 S.Ct. at 542): '[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?' The Court was referring to questions of fact which must be resolved at the trial level and was not referring to any inadequacies in the indictment."

United States v. *Lewis Food Company*, 366 F.2d 710, 713 (9th Cir. 1966).

[2] "A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

The government acknowledges in its brief that a union acting through its officers, agents and members may form a political organization parallel to the union and use union personnel to solicit and spend direct voluntary contributions for federal elections. It concedes that COPE and countless other political action groups have been so organized and operated. The difficulty with this acknowledgement is that it comes too late. The trial court, although requested to, refused to give an instruction embodying this concept. Indeed, the thrust of its direction was that the very participation of union officers and agents in the organization and operation of the political fund was evidence of impropriety Compare, *Machinists Union* v. *Street,* 376 U.S. 70 (1961).

The government contends in its brief that the contributions to the fund were in fact assessments, were in fact part of the general dues' structure and were in fact involuntarily made. These may indeed be the facts and if the jury had made such a finding, a violation of Section 610 would have been made out. But again, this the jury was not requested to so find. It was instructed to answer the broader question of whether the contributed funds constituted a part of the Union funds. Nineteen facts and circumstances were listed as bearing on the answer to this question.[3] Some of the facts and circumstances

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[3] "1. Whether or not payments to the fund were routinely made at regular intervals at job sites,

"2. Whether or not payments to the fund were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union,

"3. Whether or not the payment to the fund was determined by a formula based upon the amount of hours or overtime hours worked upon a job under the supervision of the union,

"4. Whether or not payments to the fund were at one rate for 562 members and at a different rate for members of other unions,

"5. Whether or not payments to the fund began, continued and terminated with employment on a job under the jurisdiction of the union,

were relevant to the issue of knowledge and voluntariness and others, irrelevant. One example of the latter was the instruction that the jury could consider whether the payments to the fund were routinely collected by the Union Stewards and agents of the Union at the job site.

"6. Whether or not monies of the fund were used to provide benefits to union members in their capacity as members,

"7. Whether or not payments to the fund by members of other unions were in lieu of payments to the union in the form of travel card dues in the amount of eight dollars per month,

"8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union pursuant to Section 2.05 of its Constitution and by-laws,

"9. Whether or not payments to the fund were made by those affiliated with the union to the general exclusion of other classes of persons or organizations,

"10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

"11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

"12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

"13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

"14. Whether or not some persons who worked under the jurisdiction of Local 562 did not contribute to said fund,

"15. Whether or not the monies of said fund were used in part to promote activities which were prohibited to Local 562 by its Constitution and By-Laws,

"16. Whether or not said fund was established and maintained pursuant to the advice of counsel,

"17. Whether or not the monies of said fund were reported to the Department of Labor on the LM-2 forms, which required the reporting of monies of Local 562,

"18. Whether or not expenditures from the fund were under the control of the union and its officers,

"19. Whether or not records used in the collection of the payments to the fund are similar to those employed from time to time by the union in the collection of its regular dues and assessments."

The government further contends that the political funds were spent by the individual defendants abritrarily and without consultation with the contributors. There is some evidence in the record to support this contention. Although such a practice is of questionable legality and is undesirable and undemocratic, it constitutes no violation of Section 610.

The argument is also made by the government that at least one official of the fund diverted a portion of the funds collected for political purposes to his personal use. While this act may also have been illegal and reprehensible, it was not a violation of the statute.

Finally, the government contends on appeal that the fund was used to provide benefits to some of the members of the Union. There is again evidence in the record to support, this contention, but the fact of the matter is that the fund was established for educational, legislative, charitable and defense as well as political purposes. And as I read Section 610, there is nothing in it which prohibits a union, its officers and agents from soliciting voluntary contributions for political and other purposes so long as those contributing know that all or part of the funds will be used in support of political candidates.

Nothing I have said in this opinion should be taken to indicate that a union or its officers and agents can evade the prohibitions of Section 610 by obtaining contribution cards from contributors indicating that the contributions were voluntarily made for political purposes. The test is whether the contributions are in fact so made.

It has been and is my opinion that 18 U.S.C. §610 is clearly unconstitutional if construed as the majority opinion requires. I am equally convinced, however, that the constitutionality of the statute should not be decided until a conviction is obtained under proper instructions.

On two separate occasions in the last twenty-five years, the Supreme Court has been asked to decide the constitutionality of §610. It has declined to do so on both occasions. In *United States* v. *C.I.O.*, 335 U.S. 106 (1948), the defendants were indicted under the statute for activities related to the publication and distribution of their weekly union periodical. The District Court dismissed the indictment, holding the statute to be an unconstitutional impairment of First Amendment rights. The government appealed the District Court's ruling under the Criminal Appeals Act, 18 U.S.C.A. §682. On appeal, both sides argued the constitutionality of the act. The Supreme Court, however, affirmed the dismissal of the indictment on the grounds, raised *sua sponte*, that the indictment did not charge an offense within the scope of the statute. The majority opinion noted the parties' preoccupation with the constitutional question, but stated:

> "We do not admit any duty in this Court to pass upon such a contention on an appeal under the Criminal Appeals Act except in cases of logical necessity."

Id. at 110.

Justice Frankfurter, in a concurring opinion, was even more circumspect about deciding the case. He noted, first, Chief Justice Marshall's observation that:

> "No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of a legislative act. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other points, a just respect for the legislature requires that the obligation of its laws should not be unnecessarily and wantonly assailed." (Citation omitted.)

Id. at 125.

Frankfurter went on to argue that the entire case was not ripe for adjudication, concluding that:

> "I cannot escape the conclusion that in a natural eagerness to elicit from this Court a decision at the earliest possible moment, each side was at least unwittingly the ally of the other in bringing before this Court far-reaching questions of constitutionality under circumstances which all the best teachings of this Court admonish us not to entertain.
>
> "But since my brethren find that the case calls for adjudication, I join in the Court's opinion. I do so because of another rule of constitutional adjudication which requires us to give a statute an allowable construction that fairly avoids a constitutional issue."

Id. at 129.

Nine years later, in *United States* v. *International Union, supra,* the Supreme Court was, for the second time, asked to decide the constitutionality of §610. There, the Court was again faced with an appeal from a District Court's dismissal of an indictment charging union violation of §610. The District Court had held that the indictment did not charge an offense under the statute and, therefore, did not rule on the constitutional questions. A careful study of legislative history of §610 convinced the Court that the acts charged in the indictment were within the prescriptions of the statute.

The Court, per Justice Frankfurter, then faced the Union's contention that:

> "* * * [I]f * * * [the statute] * * * embraces the activity alleged in the indictment, it offends several rights guaranteed by the Constitution."

Justice Frankfurter declined to answer this contention, responding:

> "* * * Once more we are confronted with the duty of being mindful of the conditions under which we may enter upon the delicate process of constitutional adjudication.

"The impressive lesson of history confirms the wisdom of the repeated enunciation, the variously expressed admonition, of self-imposed inhibition against passing on the validity of an Act of Congress 'unless absolutely necessary to a decision of the case.' Observance of this principle makes for the minimum tension within our democratic political system where scarcely any become, sooner or later, a subject of judicial debate.'

* * * * * * *

"Refusal to anticipate constitutional questions is peculiarly appropriate in the circumstances of this case. First of all, these questions come to us unilluminated by the consideration of a single judge—we are asked to decide them in the first instance. * * * *Finally by remanding the case for trial, it may well be that the Court will not be called upon to pass on the questions now raised.* * * *

"*Counsel are prone to shape litigation, so far as it is within their control, in order to secure comprehensive rulings.* This is true both of counsel for defendants and for the government. Such a desire on their part is not difficult to appreciate. *But the Court has its responsibility. Matter now buried under abstract constitutional issues may, by the elucidation of a trial, be brought to the surface, and in the outcome constitutional questions may disappear.*" (Citations omitted and emphasis added.)

Id. at 590-592.

In spite of the Supreme Court's obvious reluctance to decide the constitutionality of §610, as well as other legislative acts,[4] until absolutely necessary, our Court today rushes to do just that. My brother Matthes defends the action of the Court by arguing that the Courts of Appeals are rigidly bound to the literal wording of Rule 28(a)(2).

Rule 28(a)(2), which states in part that the brief of appellant shall contain "[a] statement of the issues pre-

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[4] See, *e.g.*, *Mackey* v. *Mendoza-Martinez*, 362 U.S. 384 (1960); *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U.S. 129 (1946).

sented for review," was primarily designed to clarify counsel's presentation of an appeal as well as to lighten the labors of the court. *Thys Company* v. *Anglo California National Bank*, 219 F.2d 131 (9th Cir.), *cert. denied*, 349 U.S. 946 (1955); *Iva Ikuko Toguri D'Aquino* v. *United States*, 192 F.2d 338 (9th Cir. 1951). It was not designed to permit counsel to manipulate this Court to their own interest or to prevent this Court from meeting its responsibility. See, *United States* v. *International Union*, *supra*; *United States* v. *C.I.O.*, *supra*.

I recognize, as Justice Black enunciated in *Clay* v. *Sun Insurance Office*, 363 U.S. 207 (1960), that avoidance of constitutional questions is discretionary and should be used only under the proper circumstances. I can conceive of no circumstances more appropriate than those in this case. The minority's decision would remand the case to the District Court for trial under appropriate and proper instructions. It is possible that under such instructions, our Court will not be called upon to judge this Congressional act.

The Supreme Court's Rule 23(1)(c)[5] is similar, in scope and purpose, to our Rule 28(a)(2). Yet the Supreme Court has not felt the need to religiously follow this general rule in the face of other important policy considerations.[6] Nor have the appellate courts followed their own

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[5] "*Rule 23. The petition for certiorari*

"1. The petition for writ of certiorari shall contain in the order here indicated—

* * * * * * * *

"(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court."

[6] This point is persuasively demonstrated by Chief Justice Warren's dissent in *Communist Party* v. *S.A.C. Board*, 367 U.S. 115, 119-121 (1961). The majority's failure to consider the issue urged

rule as strictly as Chief Judge Matthes would have us do. See, *e.g.*, *Platis* v. *United States*, 409 F.2d 1009 (10th Cir. 1969); *United States* v. *O'Connor*, 291 F.2d 520 (2nd Cir. 1961); *General Finance Loan Co.* v. *General Loan Co.*, 163 F.2d 709 (8th Cir. 1947).

Rule 28(a)(2) was intended to serve the Court, not to hamstring it. Long held notions of constitutional adjudication advise us to remand this case for a new trial with proper instructions. We should do so.

Judges Lay and Bright have authorized me to state that they join in this dissenting opinion, and I join in Judge Lay's dissent.

LAY, Circuit Judge, dissenting.

I would reverse the judgment below and remand for a new trial for the reasons set forth in Judge Heaney's dissenting opinion. I direct myself to the procedural question discussed in the concurring opinion.

First, I disagree with the majority that the trial court's instruction was not attacked as error by the defendants in their original briefs on appeal. Second, this court set aside the original submission of the appeal and directed anew the parties to file supplemental briefs for the benefit of the court en banc. The defendants specifically question the propriety of the instruction in their supplemental brief and the government did not raise the issue of abandonment or noncompliance with the Federal Rules of Appellate Procedure. Third, it is an equally "deeply entrenched principle" that in the public interest and to guard against

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there is not controlling in this case because of significant and material differences in the procedural postures of the two cases. At most, *Communist Party* was a case in which Justice Black's notion of using discretion in avoiding constitutional questions led to a result opposite of that here.

manifest injustice this court will notice errors not properly raised for review, if such errors are obvious or otherwise seriously affect the fairness and integrity of the judicial proceeding.

There exists a fundamental discrepancy in the concurring opinion's restatement of the constitutional issues as raised by the defendants. The First Amendment issue is there stated to be:

> "Section 610 is unconstitutional because it abridged appellants' and all union members First Amendment rights."

However, the proposition stated in defendants' original brief is fashioned not as an abstraction but as a justiciable issue:

> "Section 610, Title 18, U.S.C., *as construed and applied by the Court below,* abridges the defendants' rights as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First Amendment of the Constitution of the United States." (My emphasis.)

The justiciable controversy is the application of § 610 *"as construed and applied by the Court below."* (My emphasis.) The district court's instruction to the jurors informed them the law of the case as it was actually tried. The district court instructed the jury; "[T]he mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money." The defendants' 98 page attack is explicitly *directed to this construction* of Section 610. To now urge that the district court's instruction is not raised as error by the defendants on appeal is to ignore the heart of the matter being litigated. Cf. *Terminiello* v. *Chicago,* 337 U.S. 1 (1949). It approaches appellate review in the celestial light of abstractness.

To follow the logic of the majority's theory of abandonment does more than to shackle the appellate process to whatever narrow remedy might be sought by a party. It refuses as well any consideration of the broad congressional power given to this court under 28 U.S.C.A. § 2106,[1] and requires us to determine troublesome constitutional issues raised not by the congressional intent or enactment but by reason of the district court's narrow interpretation of the statute.

We should not pass upon the issue of the constitutionality of § 610 when it is not properly before us. The district court failed to instruct the jury that voluntary contributions to the fund are not within the scope of the statute. The statute does not and cannot proscribe use of voluntary funds. *United States* v. *Auto Workers*, 352 U.S. 567, 592 (1957); *United States* v. *C.I.O.*, 335 U.S. 106, 123 (1948). Not until the statute is given its intended construction should we weigh the constitutional issues presented. As the concurring opinion authoritatively concedes, constitutional validity of legislative action should not be passed upon until the conflict is unavoidable. See also *Thorpe* v. *Housing Authority*, 393 U.S. 268, 284 (1969); *Rosenberg* v. *Fleuti*, 374 U.S. 449, 451 (1963). As this writer observed in *In re Weitzman*, 426 F.2d 439, 454-55 (8 Cir. 1970), "the abandoning of a valid claim on appeal cannot dictate to the court when it must reach a constitutional issue." Thus, the majority, under the guise of allegiance to rules of procedure, admittedly setting aside well established principles of constitutional construc-

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[1] Section 2106 reads:

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

tion, must, because the parties so shaped the question, meet constitutional issues headon. As the concurring opinion concedes, this is simply not good policy, nor should it be.

The majority opinion upholds the constitutionality of § 610. It does so without reference to the facts of the case, since the basis of the opinion completely disregards the district court's narrow and erroneous construction of the statute. In doing so, it overlooks that the defendants were convicted under the erroneous, and in my judgment, unconstitutioinal, applicaton of the statute as encompassing funds voluntarily paid by union members for political activity. The majority justify their decision because they say the instruction itself is not attacked on appeal. The defendants' original brief belies this statement. The instruction is expressly attacked and defendants' counsel repeatedly and specifically explain the basis of the attack.[2]

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[2] The instruction is set out on page 37 of defendants' brief. Defendants' brief argues:

"The Court also instructed that (A. p. 1116): 'the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money.'" p. 37.

"The Court below construed Section 610 as prohibiting officers, agents and members of a union from forming a parallel political organization and utilizing the union leaders, officers and agents in such political organization, in the obtaining, pooling and expending of direct voluntary contributions for political purposes." p. 59.

"The statute as construed denies individual rights of voluntary association for it forbids working men to associate and act through their labor leaders in the political field to protect their collective rights. This includes both their rights as union members and the rights of the union which they have joined. Even though the choice of candidates may determine whether those rights will be secured or destroyed, the statute as construed, prohibits union members from protecting and advancing those rights." p. 65.

". . . The Court instructed the jury that it could find that a separate voluntary political fund was in fact a union fund

In essence, what the majority is saying is that although the district court's erroneous construction of the statute is raised on appeal, the defendants failed to ask for the right relief or remedy (a new trial), as a consequence of which the judgment must be affirmed. The federal rules governing procedure were never intended to punish a party for failure to seek the proper relief.[3] Decisions are replete holding that a court of appeals may shape the remedy regardless of the relief sought.[4] Section 2106 is

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by any and all circumstances in evidence (A. pp. 1112-1115). "This interpretation was made by the court despite the legislative history to the effect that a separate voluntary fund, such as the one here, is excluded from the criminal sanctions of Section 610 and without any judicial support or any prior prosecution (See Argument I, *supra*). Thus, as applied and interpreted by the lower court, Section 610 is unconstitutionally vague as it failed to give defendants fair warning of its scope and was a retroactive, unforeseeable judicial enlargement of the statute.

"Such a fortuitous judicial construction, analogous to legislative *ex post facto*, intensifies the vagueness of the statute and is even more so inimical to due process than if the statute is merely vague on its face." pp. 68-69.

"As such, the statute, as constructed by the district court, totally inhibits the fundamental freedoms of expression, assembly and petition guaranteed by the First Amendment (See Argument II, *supra*). Where a statute operates to restrain protected First Amendment freedoms, stricter standards of permissible statutory vagueness are to be applied." p. 72.

[3] This application of the rules violates the spirit and letter of the rules themselves. Compare Rule 54(c) of Fed. R. Civ. P., which reads in part: "[E]very final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, *even if the party has not demanded such relief in his pleadings.*" (My emphasis.)

[4] Compare *Turk* v. *United States*, 429 F.2d 1327 (8 Cir. 1970), an opinion in which Chief Judge Matthes joined, where because of insufficient evidence to justify an arrest and search we vacated a judgment of conviction, but remanded *sua sponte* for an evidentiary hearing on probable cause.

This court's recent remand in *Laclede Gas Co.* v. *NLRB*, 421 F.2d 610 (8 Cir. 1970), is viewed with jaundiced eye in the con-

authority and index to these decisions. See *Neely* v. *Eby Constr. Co.*; 386 U.S. 317 (1967).[5] FRAP is not concerned

curring opinion. It should be stated that a vigorous petition for a rehearing en banc was filed in that case. Not a single judge requested a vote for an en banc hearing and the petition was denied. Additionally unrecalled is the existence of compelling authority and reason for a court of appeals to remand to the National Labor Relations Board under such circumstances. See e.g., *Nuelsen* v. *Sorensen*, 293 F.2d 454, 462 (9 Cir. 1961), where the court said:

> "Yet none of these theories were advanced in appellant's pleadings, stated as issues in the pre-trial order, presented in the trial court, or dealt with in the briefs on appeal. This court has refused to reverse on a ground not argued in the trial court. United States v. Waechter, 9 Cir., 195 F.2d 963.
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> "This accords with the general rule that an appellate court will not consider sua sponte arguments not presented or urged by the litigants. This restraint is essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial forum is to decide and in order that the litigants not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence. Hormel v. Helvering, 312 U.S. 552, 556, 61 S.Ct. 719, 85 L.Ed. 1037.
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> *"There is, however, no rigid and undeviating judicially declared practice under which courts of review, invariably and under all circumstances decline to consider all questions which have not previously been specifically urged. Indeed there could not be without doing violence to the statutes which give federal appellate courts the power to modify, reverse or remand decisions 'as may be just under the circumstances.' 28 U.S.C.A. § 2106. Exceptional cases or particular circumstances may prompt a reviewing court, where injustice might otherwise result or where public policy requires, to consider questions neither pressed nor passed upon below. The power to raise and decide questions sua sponte is, however, to be exercised sparingly and with full realization of the restrictions and limitations inherent in its employment.*
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> "Rather than consider the matter sua sponte, of course, the appellate court may note the existence of the unargued, undecided question and remand the case to the lower court. This makes the decision on the matter one reflecting the consideration of a trial court and the counsel in the case.
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> "In our opinion justice requires that such a course be followed in this case." (My emphasis)

[5] In *Neely* the court of appeals had granted a judgment n.o.v. Although a motion for new trial was not presented by the verdict-

with *how* the issue is raised, but *what* is raised. To reason that a defendant is to be deprived of any relief from an erroneous conviction merely because he names the wrong remedy on appeal is reminiscent of the rigid and rationalized distinctions from the days of code pleading.[6]

Assuming *arguendo* merit to the majority's view in the context of the original briefs, I add an additional word of concern. On August 19, 1970, this court ordered the panel's original judgment to be vacated and to have the case resubmitted to the court en banc. The clerk of the court was then directed to notify the parties that they could submit supplemental briefs. On September 10, 1970, Mr. Tucker wrote the parties:

> "Reference is made to the Court's order of August 19, 1970, vacating our previous judgment and reinstating the case on our calendar. I am directed by the Court to inform counsel that this appeal is to be submitted to the Court en banc on Wednesday, October 14, 1970, at 9 a.m.
>
> "Counsel for appellants may have to and including September 22, 1970, in which to file any additional briefs thought appropriate and counsel for appellee, United States, may have to and including October 1, 1970, in which to file additional brief.
>
> "Any subsequent briefs may be in typewritten form on lettersize paper and fastened in the left margin. I will need an original and seven copies of typewritten

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holder on appeal nor by a petition for rehearing, the Supreme Court stated that "It was, of course, *incumbent* on the Court of Appeals to consider the new trial question in the light of its own experience with the case. But we will not assume that the court ignored its duty in this respect, although *it would have been better had its opinion expressly dealt with the new trial question.*" 386 U.S. at 329-30. (My emphasis.)

[6] This recalls to mind Maitland's aphorism that "the forms of action we have buried, but they still rule us from their graves." Maitland, The Forms of Action at Common Law 296 (1909).

briefs which should, of course, be served on opposing counsel."

On September 17, 1970, the defendants submitted a supplemental brief requesting in the alternative a new trial, for the reason that:

> "The Court below erred in instructing the jury that it could find the defendants guilty even if it believed all of the contributions to the Political Fund were voluntarily made."

On September 29, 1970, the government responded solely to that proposition. Ironically, it is not the government that first raises the question of violation of the Federal Rules of Appellate Procedure.

The concurring opinion construes the Federal Rules of Appellate Procedure as inflexibly barring this court's consideration of the erroneous instruction. Assuming solely for the sake of argument that one could reasonably say that the defendants did not properly attack the court's construction of the statute on appeal, the concurring opinion overlooks another "deeply entrenched principle" followed by this circuit. Senior Judge Vogel, when Chief Judge of this court, said in *Harris* v. *Smith*, 372 F.2d 806, 815 (8 Cir. 1967), "An additional ground of error, *although not urged on appeal*, should be noticed by this court because of its substantial effect upon the rights of the parties." (My emphasis.) Judge Vogel quoted from *General Finance Loan Co.* v. *General Loan Co.*, 163 F.2d 709, 711 (8 Cir. 1947), where the late Judge Thomas observed:

> "'We may, however, in our discretion consider a plain error apparent on the face of the record for the purpose of avoiding a manifest miscarriage of justice, or where the issue raised is one of public concern, even in a civil case. Kincade v. Mikles, 8 Cir., 144 F.2d 784; National Aluminate Corporation v. Permutit Co., 8 Cir., 144 F.2d 93.'"

And we said in *Lewis* v. *United States*, 340 F.2d 678, 683 (8 Cir. 1965), "'it (is) our duty to correct clear error' where shown to exist." See also *Harris* v. *United States*, 297 F.2d 491, 492 (8 Cir. 1961); *Page* v. *United States*, 282 F.2d 807, 810 (8 Cir. 1960); *United States* v. *353 Cases, Etc.*, 247 F.2d 473, 477 (8 Cir. 1957); *Cave* v. *United States*, 159 F.2d 464, 469 (8 Cir. 1947), cert. denied 331 U.S. 847, rehearing denied 332 U.S. 786. The concurring opinion's inflexible approach to appellate review is contrary to the view taken not only by this circuit, but by all other courts of appeals. In *United States* v. *Achilli*, 234 F.2d 797, 809 (7 Cir. 1956), aff'd 353 U.S. 373 (1957), the court said: "Rule 52(b) was designed to reach errors of such a substantial nature that they would, if not corrected, result in a manifest miscarriage of justice. [citing authority.] Inasmuch as errors within the comprehension of the provisions of this rule are those of such a nature that they must be corrected to prevent a manifest injustice, it is incumbent upon a reviewing court to notice such error *sua sponte* although the issue presented *is not raised on appeal.*" (My emphasis.) In *Forakis* v. *United States*, 137 F.2d 581, 582 (10 Cir. 1943), the Court of Appeals for the Tenth Circuit observed: "That general rule [errors not preserved are not reviewable on appeal] bears the well recognized exception that where life or liberty is involved, an appellate court may notice and correct serious errors which were fatal to the rights of the accused even though they were not challenged or reserved." In *Gros* v. *United States*, 136 F.2d 878, 880-81 (9 Cir. 1943), reversed on rehearing 138 F.2d 260, the principle is similarly expressed: "It is obvious that it is immaterial in a court of justice whether the court sua sponte first recognizes and calls attention to a plain error 'absolutely vital to defendants' and that appellant's counsel then urges it, or that counsel first calls the appellate court's attention to the vital error." See also *Fisher* v. *United States*, 328

U.S. 463, 467-68 (1946); *Screws* v. *United States*, 325 U.S. 91, 107 (1945); *Reisman* v. *United States*, 409 F.2d 789, 791 (9 Cir. 1969); *McMillan* v. *New Jersey*, 408 F.2d 1375, 1377 n. 7 (3 Cir. 1969); *Garza-Fuentes* v. *United States*, 400 F.2d 219, 223 (5 Cir. 1968), cert. denied 394 U.S. 963 (1969); *Stephan* v. *United States*, 133 F.2d 87, 89-90 (6 Cir. 1943), cert. denied 318 U.S. 781 (1943).

I cannot judicially accept the reasoning that manifest injustice may take place in a criminal trial and yet lay beyond the reach of appellate review because a lawyer inadvertently failed to protect the defendant's rights in an appellate brief. There should exist no talismanic phrases to excite an appellate judge to recognize a miscarriage of justice in a criminal appeal. For an appeals judge to take effective action in these circumstances, even where counsel fails to properly preserve the error, is not advocacy, but rather an urgent and necessary exercise of judicial responsibility. If this be proscribed as advocacy, the breadth and meaning of judicial review would have been rendered meaningless long ago. See generally Cardozo, The Growth of the Law (1924).[7]

As the Supreme Court has observed:

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged

[7] In this work Mr. Justice Cardozo, while on the New York Court of Appeals, observed:

> "Every decision, where the judicial process is creative, and not merely static or declaratory, is a reflection of the problem and an expression of the answer. The philosophy may be inconsistent or unsound or distorted. The answers will share the vice, and be perverse or unwise or contradictory. The problem is always present. We shall not find the solution by acting as if there were nothing to be solved." At 27.

would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." *Hormel* v. *Helvering*, 312 U.S. 552, 557 (1941).[8]

I am authorized to say that Judge Heaney and Judge Bright concur in this opinion.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

---

[8] Mr. Justice Cardozo also reflected:

"The passing years have not brought to me the gift of wisdom, but they have at least opened my eyes to the perception that distinctions which in those early days seemed sharp and obvious are in truth shadowy and blurred; the walls of the compartments in no wise water-tight or rigid." Cardozo, supra n. 7 at 36.

70-14

Supreme Court of the United States

No. 1289 ---- , *October Term, 19* 70

Pipefitters Local Union No. 562 et al.,

Petitioners,

v.

United States

ORDER ALLOWING CERTIORARI. Filed May 24 ---------- , 19 71.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth ---------- Circuit is granted.

Mr. Justice Blackmun took no part in the consideration or decision of this petition.

FILE COPY

FILED
JAN 29
E. ROBERT SEAVER

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ~~1989~~ 70-79

PIPEFITTERS LOCAL UNION NO. 562, LAWRENCE L. CALLANAN, JOHN L. LAWLER and GEORGE SEATON,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Eighth Circuit

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. .....

PIPEFITTERS LOCAL UNION NO. 562, LAWRENCE L. CALLANAN, JOHN L. LAWLER and GEORGE SEATON,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals For the Eighth Circuit

Petitioners pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit en banc, entered in this cause on November 24, 1970.

OPINION BELOW

The majority and dissenting opinions of the panel of the Eighth Circuit Court of Appeals are not yet reported and are printed as Appendix A, *infra*. The majority and dissenting opinions of the Court of Appeals *en banc* are not yet reported and are printed as Appendix B, *infra*, pp. A. 22-46.

JURISDICTION

The judgment of the Court of Appeals *en banc* (Appendix C, *infra*) was entered on November 24, 1970. A timely petition for rehearing was denied on December 17, 1970 (Appendix D, *infra*). On January 6, 1971, Mr. Justice White extended the time for filing of the petition for a writ of certiorari to February 1, 1971. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face, abridges the petitioners' rights, as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First Amendment of the Constitution of the United States?

2. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face, is so vague, indefinite and uncertain as to deprive petitioners of due process of law and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments of the Constitution of the United States?

3. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face is an unjustifiable arbitrary discrimination which deprives unions, its members and persons of the laboring class of liberty and property without due process of law in violation of the Fifth Amendment?

4. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face, unlawfully abridges the rights of petitioners and all union members to vote and choose their Senators and

Representatives in Congress, as guaranteed by Article I, Section 2, and the Seventeenth Amendment to the Constitution of the United States?

5. Whether the Courts below improperly construed Section 610, Title 18, U. S. C. in holding that the indictment alleged an offense and the evidence was sufficient to sustain a conviction for conspiracy to violate Section 610, Title 18, United States Code, where both showed that the funds expended for political purposes were not funds of the union and were never commingled with the union funds, but instead were funds of a political organization which received its funds from direct voluntary contributions from individual members of the union and other individual pipefitters who worked under the jurisdiction of the union?

6. Whether the jury by making a special finding in its verdict "that a willful violation of Section 610 of Title 18 United States Code was not contemplated" found lacking an essential element of any conspiracy under Section 371, Title 18, United States Code to violate a substantive statute which is malum prohibitum, and thereby acquitted the petitioners?

7. Whether the District Court prejudicially erred in instructing the jury that it could find the defendants guilty even if it believed that all of the contributions to the separate Voluntary Fund were voluntarily made.

8. Whether the Court of Appeals *en banc* below erred in refusing to rule on the question as to whether the instructions of the District Court were incorrect.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 610, Title 18, U. S. C., provides as follows:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Con-

gress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential or Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution in violation of this section shall be fined not more than $1,000 or imprisoned not more than one year or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

"For the purpose of this section 'labor organization' means any organizations of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Section 371, Title 18, U. S. C., provides as follows:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years or both.
>
> "If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

First Amendment, Constitution of the United States provides in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fifth Amendment, Constitution of the United States provides in pertinent part:

> "No person shall be . . . deprived of life, liberty, or property without due process of law;"

Sixth Amendment, Constitution of the United States provides in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation;"

Seventeenth Amendment, Constitution of the United States provides in pertinent part:

> "The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have

> one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

Article I, Section 2, Constitution of the United States, provides in pertinent part:

> "The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

STATEMENT

Petitioners, Pipefitters Local 562 and three of its officers, were convicted by a jury verdict on a one-count indictment which charged them with having conspired from 1963 to the date of the indictment to violate Section 610, Title 18, U. S. C., by conspiring to have Pipefitters Local 562 make contributions and expenditures in elections for Federal Office (paragraph 9, A. pp. 1105-1106).* The indictment, detailed the alleged conspiracy by charging that petitioners "would establish and maintain a special fund entitled 'Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund,' which fund would have the appearance of being a wholly independent entity, separate and apart from Local 562 * * *" (paragraph 10, A. p. 1106); that petitioners, "in order to facilitate an orderly, regular and systematic collection of contributions to the Fund, would cause the agents of the Fund [being foremen, stewards, officers, members and employees of Local 562] to distribute to the pipefitters working at all job sites contribution agreement cards to be signed by such pipefitters," and that

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* "A" referenees are to the printed Appendix in the Court of Appeals.

such agents of the Fund, "would advise newly employed pipefitters at such job sites of the existence of the Fund and of the rates of participation" (paragraphs 15 and 16, A. pp. 1107-1108); that petitioners "by means of the creation and operation of the Fund would * * * [collect] for political purposes one dollar ($1.00) per day worked from members of defendant Local 562 and two dollars ($2.00) per day worked from non-member pipefitters employed on jobs within the jurisdiction of defendant Local 562" (paragraph 13, A. p. 1107); that such agents collected such contributions on such regular systematic basis on the job sites and at the headquarters of Local 562 (paragraphs 7, 15 and 16, A. pp. 1105, 1107-1108); that petitioners made contributions and expenditures to Federal candidates in the 1964 and 1966 elections by checks on said Fund in the approximate amount of $150,000 (paragraph 17; A. p. 1108); and finally that said Fund was in fact a Fund of Local 562 (paragraph 7, A. p. 1105).

The jury made a special finding "that a willful violation of Section 610, of Title 18, United States Code was not contemplated" (A. p. 1125). Each of the individual petitioners were sentenced to imprisonment for a term of one year and to pay a fine of $1,000.00 and the Union to pay a fine of $5,000.00 (Tr. 2093).

Pre-trial motions were filed in the District Court alleging, among other things, that the indictment was insufficient in that it did not allege that the contributions were involuntary. On the hearings on these motions, the Government asserted that it was their position that voluntariness of the contributions to the political fund was not an element of the offense. Throughout the trial the Government reasserted this position, confirmed in by the trial Court. For example, after the defense had adduced the testimony of 77 members of Local 562 that their contributions were voluntary or that they had made no con-

tributions at all without any adverse consequences upon them, the District Court in effect stopped the presentation of any more witnesses on the issue of voluntariness for the reason that the trial Court considered it cumulative. In doing so, the Court and Government both asserted that it was their positions that voluntariness of the contributions was not an element of the offense (A. 629).

Numerous instructions requested by the defendants dealing with the issue of voluntariness were rejected by the Court (A. 1096-1100). For example, defendants' refused Instruction BB (A. p. 1098) reads:

> "The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits money of a labor union from being used for such purposes. In this connection, money contributed by members of a labor union, voluntarily, for the purpose of being used for political purposes, with knowledge of such purpose is not money of a labor union. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and that they were made by the members for political purposes then you must find the defendants not guilty."

Over objection, the jury was instructed that the fact that the payments into the Fund may have been made voluntarily by all of the contributors thereto does not, of itself mean that the money so paid into the Fund was not Union money (A. 1116). The instruction is set forth at p. A. 18 of the Appendix, *infra*. The Court then instructed the jury, in conformity with the position taken by the Court and Government throughout the trial, that the

jury could find that the Voluntary Fund was a Fund of the Local if it found that the Fund was routinely collected by officials of the Local on the job site; that the payments into the Fund were determined by a regular formula; that the payments began and terminated with employment on the job; and that moneys from the Fund were used to provide benefits to the Union members and were used for other activities which were permitted to be done by the Local itself (A. pp. 1112-1115). The instruction is set forth at pp. A. 18-A. 19 of the Appendix, *infra*. In other words, this case was tried throughout every stage, from the indictment to its conclusion, on the theory that voluntariness of the contributions was not an element of this offense and that the crime was shown simply by the method of collecting contributions to the Fund.

It was not alleged nor was there any evidence that any political contributions or expenditures were made out of the treasury of Local 562, which was maintained separate and distinct from the treasury and assets of the Voluntary Fund (A. p. 111). Likewise it was not alleged nor was there any evidence that any of the dues or assessments of Local 562 were ever paid into the Voluntary Fund or were ever transferred from the treasury of the Local itself (A. pp. 59-128).

The evidence showed that about 1949, a Voluntary Political, Educational and Legislative Fund was established by members of Local 562 and others working under the jurisdiction of the Local (A. pp. 972, 984). Until the end of the year 1962, separate collections were made from both members and non-members of Local 562 working under its jurisdiction for the Voluntary Political Fund, in a manner similar to the collection of the working assessments for the union itself (A. pp. 985, 1019-1020). The monies of the Fund were always kept and maintained separate and apart from the funds of the Local (A. pp.

350-351, 486) and were publicly disbursed by check by the Director of the Fund, who was also an officer of the Local (A. p. 1020).

From its inception, many of the men did not make contributions or payments into the Voluntary Political Fund (A. pp. 541, 553, 561, 868). There was an abundance of evidence that contributions were always on a voluntary basis.

A total of 77 members of Local 562 or other pipefitters who worked under the jurisdiction of Local 562 testified in behalf of the defense (A. pp. 527-772, 832-970). Thirty-two of them either did not contribute to the Voluntary Fund, had never contributed, or did not contribute regularly under the formula voted on by the contributors (A. pp. 540, 553, 561, 556, 572, 577, 579, 604, 617, 637, 685, 700, 704, 714, 718, 731, 752, 834, 838, 843, 850, 861, 864, 868, 871, 875, 886, 889, 893, 899, 901, 956). Some, even foremen (who were selected by the Local), who had worked steadily since the beginning of the Fund in 1949, had never contributed to the Fund nor been spoken to about not doing so (A. pp. 561, 541, 553, 869). One had never contributed because he was a Republican (A. p. 869). One foreman had always both refused to make collections for the Fund (A. p. 543), and refused to contribute because he was not in favor of some of the candidates supported by the Fund or did not feel he could afford it (A. pp. 543-544). Another such foreman did not believe that money spent on politics was helpful to labor (A. p. 558). Others, some foremen, quit giving several years before the trial without being questioned or discriminated against (A. pp. 556, 577, 601, 617, 685, 700, 714, 834, 844, 875). One foreman quit giving in 1965 because the Fund refused to support him when he ran for the Missouri Senate. He became angry and told Petitioner Callanan that he would no longer contribute. Peti-

tioner Callanan told him to do as he pleased because the Fund was purely voluntary (A. pp. 601, 603). Callanan also told another non-contributing member the same thing (A. p. 620). Another foreman quit contributing because he disagreed with some of the Fund's political endorsements (A. p. 835). Others just decided to quit, or had financial problems. The remainder made contributions when they chose to do so. All of these witnesses testified that they had never been discriminated against nor spoken to about not contributing, or not making the recommended contributions.

All defense witnesses who had contributed testified that their contributions were purely voluntary (A. pp. 527-772, 832-970). The defense was prepared to call many other such witnesses, but, in practical effect, was stopped by the Court from doing so for the reason that the testimony was cumulative (A. pp. 968-970). Indeed, both the Government and Court had earlier indicated that it was their positions that voluntariness of the contributions was not the essence of the offense (See, e. g., A. p. 629).

The Government had called as witnesses 15 pipefitters. Almost all of these witnesses testified that their contributions had always been voluntary (A. pp. 172, 191, 460, 260, 299, 345, 350, 485, 238); that no one, including petitioners, had ever put any pressure on them to contribute (A. pp. 172, 189, 191, 457, 316, 321, 347, 239, 383); that they had never been told by any petitioner or anyone else, to contribute (A. pp. 191, 460, 259, 321, 322, 347, 360, 240, 239, 361, 446, 483); that they had never told anyone, nor knew of anyone, who was given less work or denied work or union membership, for failing to contribute (A. pp. 460-461, 259-260, 288-289, 310-311, 321, 322, 359, 361, 364, 446, 382, 484, 240); that they had always told men that contributions were purely voluntary (A. pp. 170, 186, 189, 455, 253, 256, 258, 323, 339, 346, 360, 361, 419, 372-373, 382, 474, 480, 237).

After the return of this indictment the contributors to the Voluntary Fund, both members and non-members, met, pursuant to notice, and by a secret ballot voted to continue the Voluntary Fund, by a vote of 743 "Yes" and 5 "No". About 200 contributors who were not members of Local 562 were present at this meeting (A. pp. 128, 1016-1017).

In 1963[1] the Union obtained by contract check-off of working assessments. At that time the Voluntary Fund was reviewed by Harry Craig, a prominent St. Louis Labor Attorney (A. pp. 986, 1044, 1051-1052), and some changes were made in the Voluntary Fund. Thereafter, before accepting contributions, all contributors signed a voluntary contribution pledge card, which Craig designed (A. pp. 1001, 1043, 1061, D. Ex. A), and the name and purposes of the Fund was changed from "Voluntary, Political, Educational and Legislative Fund" to "Voluntary Political, Educational, Legislative, Charity and Defense Fund." At that time, attorney Craig advised the officers of Local 562 that they could legally establish a separate fund, administered and maintained apart from and not commingled with, Union funds, to be used for political purposes (A. pp. 1026, 1054, 1072-1073); that money received into said Fund could not be made a condition of employment or retention of employment or of union membership (A. pp. 1056, 1064-1065, 1067-1070, 1073, 1087); that the Local could solicit money for said Fund (A. p. 1060); that the contributors should first sign a pledge card showing that the contributions were going into the separate political (or other activity) Fund and were voluntary (A. pp. 1061, 1078); that the contributions could be collected in any manner, including soliciting and collecting on the job site by Union stewards and job foremen, when a man reported for work (A. pp. 1064-1065, 1067, 1070, 1071); that con-

[1] The indictment begins at this time.

tributions could be pledged and collected on a regular systematic formula based on amount of work (A. p. 1081); and that the Fund could accept contributions from some workers and exclude others (A. p. 1083).

At its highest peak, working assessments of members of the local were 3¾% of gross pay (or $1.48 per day), and it was recommended that contributions of 50¢ per day be made by members of the Local to the Voluntary Fund, for a total of about 5% of gross pay (A. pp. 1005-1007, 1008, 1010). It was recommended that non-members working under the jurisdiction of the Local, who could not legally pay working assessments to the Union, contribute $2.00 per 8 hours working day, or about 5% of their gross pay, to the Voluntary Fund (A. pp. 1008-1010).

During the indictment period the Voluntary Fund made contributions, all by check, to candidates for Federal Office. In 1964 they totaled $97,347; in 1965, $8,919; and in 1966, $45,146 (A. pp. 132-133). All contributions were made to DEMOCRATIC PARTY candidates.[2] Almost every contributor was a Democrat (A. pp. 172, 195, 461, 305, 322, 347, 361, 446, 483, 412, 529, 595, 613, 617, 634, 674). No contributor was found who was a Republican.

On appeal to the Eighth Circuit, petitioners raised the issues set forth in Questions Presented 1 through 6, *supra*,[3]

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[2] $10,897.38 Sen. Symington; $2,000.00 Dem. Cong. Com.; $35,000 Dem. Nat. Com.; $3,200 Cong. Sullivan; $150 Cong. Candidate McClanahan; $500 Sen. Candidate Harris; $4,000 Cong. Karsten; $5,000 Cong. Icord; $4,300 Cong. Price; $3,000 Cong. Frazier; $1,000 Sen. Proxmire; $42,000 President Johnson; $2,500 Cong. Bolling; $2,500 Sen. Hart; $2,500 Sen. Carvel; $8,869.05 Sen. Long of Missouri; $3,195.50 Cong. Candidate Joblocki; $1,000 Cong. Candidate Ryan; $1,000 Cong. Candidate Stalbaum; $2,000 Cong. Candidate Race; $10,000 Sen. Douglas; $2,000 Cong. Candidate Fogarty; $1,000 Cong. Candidate Fallon; $1,000 Cong. Candidate Haney; and $1,000 Cong. Candidate Harding (G. Exhs. 6-63, A. pp. 139-150).

[3] They were stated as set forth in Appendix E, *infra*, pp. A. 49-A. 50).

and took the position that Section 610 as thus construed and applied by the trial Court was unconstitutional and that they were entitled to an outright reversal of their convictions for that reason among others, rather than a new trial.

For the first time in the Government's brief in answer to petitioners' brief before the Eighth Circuit in panel, the Government changed its entire position as to the interpretation of the statute, and took the position that the contributions to the Fund by the members and non-members of Local 562 had been made involuntarily. Further, as Judge Heaney pointed out in his dissent both in panel and en Banc (*infra*, pp. A. 18, A. 29), the Government for the first time acknowledged in its brief that a Union acting through its officers, agents and members may form a political organization parallel to the Union and use Union personnel to solicit and spend direct voluntary contributions for Federal elections, contrary to the theory upon which the case had been tried. The Government also, for the first time, conceded that COPE and countless other labor political action groups had been so organized and operated.

In view of this ultimate but final acknowledgment by the Government in its brief, Judge Heaney, pursuant to the dictates of the Supreme Court in **United States v. Auto Workers**, 352 U. S. 567, and **United States v. C. I. O.**, 335 U. S. 106, *sua sponte*, ruled that, for the reason set forth in Question Presented 7, *supra*, a new trial should be granted in order to avoid facing the grave constitutional questions that had been created in this case by the application and construction of the statute by the trial Court.

The majority opinion in panel in the Court of Appeals, never actually ruled upon the issues that were raised in petitioners' brief there, as to whether or not the statute was unconstitutional as construed and applied by the Dis-

trict Court, and consequently by the jury in this case. It ignored the construction and application of Section 610 by the District Court. Thus, the majority opinion, in ruling on the sufficiency of the evidence, states that (p. 10): "It would appear to be unrealistic to believe that such a large number of workmen would make such substantial voluntary contributions to be used for political purposes unless they felt that their job security required them so to do." Then, the majority, in dealing with the First Amendment issue, which it acknowledged to be "substantial and difficult" (p. 10), ruled that Congress was "'attempting to protect the individual union member's right to his own political views and the right to support or not to support them through money contributions'" (p. 12). Thus interpreted, the majority held that Section 610 did not offend the First Amendment rights of labor union members to engage in political association, stating that "Separate voluntary political associations by union members are not in any way proscribed by the statute" (p. 13). Further, the majority, in dealing with the other difficult constitutional problems, said (p. 14): "Section 610 only prohibits [working men] from being forced into [political contributions]." Indeed, the majority opinion, like the Government's brief in the Court of Appeals, is permeated with words and phrases connoting the thought that the contributions to the separate Voluntary Fund, without the jury so finding, were involuntary.

Thereafter, on August 19, 1970, an unlimited rehearing was granted by the Eighth Circuit Court *en banc*. On August 26, 1970, petitioners wrote the clerk of the Eighth Circuit requesting permission to file a supplemental brief in connection with the rehearing of the case by the Court *en banc*. In doing so, petitioners specifically pointed out: "It is not our intention to rebrief the issues covered in our original brief but rather to deal supplementally with the issue considered by the dissent in the division decision."

Thereafter, on September 10, 1970, petitioners were informed by letter from the clerk of the Court that such a supplemental brief could be filed. A Supplemental Brief was filed by petitioners raising and briefing the question set forth in Question Presented 7 *supra*. The Government filed a brief in Answer to it, without objecting to its being heard and ruled on. Three of the seven members of the Court *en banc* ruled that the statute as construed and applied by the District Court is unconstitutional (Appendix, *infra*, p. A. 32). The other four members of the Court, in its opinion, *sua sponte*, dealt solely with the issue as to whether or not the Court could consider and rule upon Question Presented 7, *supra*, and held that it could not (Appendix, *infra*, pp. A. 23-A. 28). This issue was never briefed by the parties. The majority of four judges en banc also did not rule upon the grave constitutional issues that were raised by petitioners in their original briefs as to whether or not Section 610 as construed and applied by the District Court was unconstitutional, except to state that the "judgments of conviction and sentences imposed are affirmed for the reasons set out in the panel majority opinion filed June 8, 1970" (Appendix, *infra*, p. A. 23).

All of the dissenting Judges held that the instructions were prejudicially erroneous (Appendix, *infra*, p. A. 29). Further, Judge Heaney in his dissenting opinion, joined by Judges Lay and Bright, ruled, *inter alia*, that the refusal of the majority to rule on this issue (and thereby avoid the Constitutional questions) was in direct conflict with many decisions of this Court (Appendix, infra, pp. A. 32-A. 37). In addition, Judge Lay in his dissenting opinion, joined by Judges Heaney and Bright, held that 1) the trial Court's instructions were in fact attacked as error by petitioners in their original briefs, 2) the Court of Appeals set aside the original submission of the appeal, directed the parties to file supplemental briefs for the benefit of the Court *en banc* and the petitioners specifically

questioned the propriety of the instruction in said brief without any objection or claim of abandonment by the government, and 3) in the public interest and to guard against manifest injustice such an obvious error as the instructions presented should be corrected (Appendix, *infra*, A. 37-A. 46).

REASONS FOR GRANTING THE WRIT

1. *The Constitutional Questions.* The Court of Appeals, by a four to three vote, has rendered a decision deciding an important question of Federal Constitutional law which has not been, but should be, settled by this Court. The District Court construed Section 610 as prohibiting officers, agents and members of a union from forming a parallel political organization and utilizing the union leaders, officers and agents in such political organization, in the obtaining, pooling and expending of direct voluntary contributions for political purposes. Three judges of the Court of Appeals ruled that Section 610 as thus construed and applied by the District Court was unconstitutional. The other four Judges held the statute to be constitutional by adopting the panel majority opinion, which ignored the construction and application of the statute by the District Court and assumed that the contributions were involuntary. As noted, the jury had been instructed that it could convict even if it found that all the contributions to the separate fund were made voluntarily.

On one occasion Section 610, not so broadly construed and applied, was saved by this Court by a narrow construction of the word "expenditure," with four Justices of the Court believing it to be unconstitutional. **United States v. Congress of Industrial Organizations**, 335 U. S. 106, 68 S. Ct. 1349 (1948). On a second occasion, three Justices held Section 610 to be unconstitutional, with the majority not resolving that issue. **United States v. In-**

ternational Union United Automobile Workers of America (UAW-CIO), 352 U. S. 567, 77 S. Ct. 529 (1957). Heretofore no Court has ever ruled on the constitutionality of Section 610, but has always avoided such a ruling, pursuant to the dictates of the last two cited cases, by disposing of the case on some other issue, even where not raised by either party.

Indeed, this is the first case which the Government has ever prosecuted where the money expended for political purposes did not come from union dues. However, the word "expenditures" has been challenged several times. In none of the reported cases was a conviction sustained. In most cases it was held that the political expenditure there involved was not prohibited by the statute. **United States v. CIO**, *supra*; **United States v. UAW-CIO**, *supra*; **United States v. Painters Local Union No. 481**, 172 F. 2d 854 (2 Cir., 1949); **United States v. Construction and General Laborers Union No. 264**, 101 F. Supp. 869 (W. D. Mo. 1951). In the other two cases, although the money expended for political purposes had its source in union dues, the Court found no violation of the statute on some theory of voluntariness. **United States v. Warehouse and Distribution Workers Union Local 688**, 47 L. R. R. M. 2005 (E. D. Mo. 1960); **United States v. Anchorage Central Labor Council**, 193 F. Supp. 504 (D. Alaska 1961).

In the **CIO** case, this Court said (335 U. S. at 120) "it is clear that Congress was keenly aware of the constitutional limitations on legislation and of the danger of the invalidation by the Courts of any enactment that threatened abridgment of the freedoms of the First Amendment. It did not want to pass any legislation that would threaten interferences with the privileges of speech or press or that would undertake to supersede the Constitution. The obligation rests also upon this Court in construing Congressional enactments to take care to interpret them so as to avoid a danger of unconstitutionality." This Court

later conceded that it "strained words" to avoid the serious constitutional issues presented in the **CIO** case. **United States v. Rumely**, 345 U. S. 41, 47, 73 S. Ct. 543 (1952).[4] To prohibit union members from voluntarily pooling their financial resources in political association, in an organization separate from the union, through their chosen leaders, raises far more serious constitutional doubts than the political expenditure made by the union itself in the **CIO** case.

A. *The First Amendment.* First Amendment rights enjoy a preferred status in our constitutional scheme,[5] and the most fundamental of all such First Amendment rights is the right of political association and expression.[6]

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[4] This Court has consistently followed the rule that where a statute is susceptible of two constructions, one raising serious constitutional questions, and the other avoiding them, the Court's duty is to adopt the latter construction. **United States v. CIO**, *supra*, 335 U. S. at 121; **United States v. Rumely**, *supra*; **Eastern R. R. Presidents Conference v. Noerr Motor Freight, Inc.**, 365 U. S. 127, 138, 81 S. Ct. 523 (1961); **Harriman v. Interstate Commerce Commission**, 211 U. S. 407, 422, 29 S. Ct. 115 (1908).

[5] **New York Times Co. v. Sullivan**, 376 U. S. 254, 269-270, 84 S. Ct. 710 (1964); **Sherbert v. Verner**, 374 U. S. 398, 83 S. Ct. 1790 (1963); **Lamont v. Postmaster General**, 381 U. S. 301, 85 S. Ct. 1493 (1965); **United States v. Carolene Products Company**, 304 U. S. 144, 58 S. Ct. 778 (1938).

[6] **Sweezy v. New Hampshire**, 354 U. S. 234, 250, 77 S. Ct. 1203 (1957); **N. A. A. C. P. v. Button**, 371 U. S. 415, 430, 83 S. Ct. 328 (1963); **DeJonge v. Oregon**, 299 U. S. 353, 57 S. Ct. 255 (1937); **Machinist v. Street**, 367 U. S. 740, 812-816, 81 S. Ct. 1784 (Frankfurter dissenting) (1961); **United States v. CIO**, *supra*, 335 U. S. at 144 (Rutledge, J., concurring); **Stromberg v. California**, 283 U. S. 359, 369, 51 S. Ct. 532 (1931); **N. A. A. C. P. v. Alabama**, 357 U. S. 449, 78 S. Ct. 1163 (1958); **Watkins v. United States**, 354 U. S. 178, 77 S. Ct. 1173 (1957); **N. A. A. C. P. v. Alabama ex rel. Flowers**, 377 U. S. 288, 84 S. Ct. 1302 (1964); **Thomas v. Collins**, 323 U. S. 516, 65 S. Ct. 315 (1945); **Railroad Trainmen v. Virginia Bar**, 377 U. S. 1, 84 S. Ct. 1113 (1964); **United Mine Workers v. Illinois Bar Ass'n.**, 389 U. S. 217, 88 S. Ct. 353 (1967).

In **Sweezy v. New Hampshire**, 354 U. S. 234, 250, this Court said:

> "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations."

From this premise, that "political association" is a basic freedom protected by the First Amendment, this Court has found other group activities to be a form of political association. Thus, the N. A. A. C. P. Legal Defense and Educational Fund, Inc. was held to be a form of Political Association protected by the First Amendment (as incorporated in the Fourteenth Amendment) against state claims that it constituted solicitation of legal business. **N. A. A. C. P. v. Button**, *supra*, 371 U. S. at 429:

> "In the context of NAACP objectives, litigation is • • • a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression."

And it "may be the most effective form of political association" (at p. 431).

Likewise, other forms of orderly group activity to "achieve legitimate political ends" have been held to be protected by the First Amendment against regulatory assaults by government: to freely associate, without governmental regulation or compelled disclosure, for the advancement of beliefs and ideas (**N. A. A. C. P. v. Alabama**, *supra*; **N. A. A. C. P. v. Alabama ex rel. Flowers**, *supra*); to organize workers into a union (**Thomas v. Collins**, *supra*); to have minority political associations without

compelled disclosure thereof (**Sweezy v. New Hampshire**, *supra*); to furnish legal services to union members by the union (**Railroad Trainmen v. Virginia Bar**, *supra*; **UMW v. Illinois Bar Ass'n.**, *supra*); to assemble in public for peaceful political action and discussion of minority views (**DeJonge v. Oregon**, *supra*); to peacefully picket in public places (**Thornhill v. Alabama**, 310 U. S. 88, 60 S. Ct. 736 (1940); **Amalgamated Food Employees Local 590 v. Logan Valley Plaza, Inc.**, 391 U. S. 308, 313, 88 S. Ct. 1601 (1968)).

If Section 610 be left construed to cover the facts alleged in this indictment, as shown by the evidence, and as determined by the jury under the instructions, it will achieve the elimination of individual members of organized labor from participation in federal elections and to that extent from public affairs. For the statute as construed, and indeed on its face, denies individual rights of voluntary association for it forbids working men to associate and act through their labor leaders in the political field to protect their collective rights. Even though the choice of candidates may determine whether those rights will be secured or destroyed, the statute as construed, prohibits union members from protecting and advancing those rights, by spending jointly any money, through a parallel political organization, to express their opposition to a candidate, even if the members are unanimous in their action. At the least, we believe, this Court should determine this issue.

B. *Fifth Amendment—Vagueness.* It is a fundamental and well established principle of our constitutional system that vague, indefinite and uncertain statutes imposing criminal sanctions are prohibited.[7] On numerous occasions,

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[7] **United States v. L. Cohen Grocery Co.**, 255 U. S. 81, 41 S. Ct. 298 (1921); **United States v. Cardiff**, 344 U. S. 174, 73 S. Ct. 189 (1952); **Rabeck v. New York**, 391 U. S. 462, 88 S. Ct. 1716 (1968); **Baggett v. Bullitt**, 377 U. S. 360, 84 S. Ct. 1316

vague statutes have been declared void as violative of the Fifth, Sixth and Fourteenth Amendments. The vices inherent in unconstitutionality vague statutes are the risks of unfair prosecution and the potential deterrence of constitutionally protected conduct. **Cramp v. Board of Pub. Instruction of Orange County, Fla.**, 368 U. S. 278, 283, 82 S. Ct. 275 (1961).

The lower Courts' interpretation and application of Section 610 to the case at bar demonstrates the statute's constitutional infirmity. The District Court interpreted the statute to include the Pipefitters' Voluntary Fund by overruling the motion to dismiss, by denying the motions for judgment of acquittal and by its instructions (A. pp. 1095, 1112-1115). The Court instructed the jury that it could find that a separate voluntary political fund was in fact a union fund by any and all circumstances in evidence (A. pp. 1112-1115), and even though all contributions were voluntary (A. p. 1116). This interpretation was made by the Court despite the legislative history to the effect that a separate voluntary fund, such as the one here, is excluded from the criminal sanctions of Section 610 (93 Cong. Rec. 6437-47) and without any judicial support or any prior prosecution. Thus, as applied and interpreted by the District Court, Section 610 is unconstitutionally vague as it failed to give petitioners fair warning of its scope. Indeed, it amounted to a retroactive, unforseeable judicial enlargement of the statute.

Unless this Court determines the issue, all unions and union members now do not know what they are permitted

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(1964); **Giaccio v. Pennsylvania**, 382 U. S. 399, 86 S. Ct. 518 (1966); **Connally v. General Construction Co.**, 269 U. S. 385, 46 S. Ct. 126 (1926); **Herndon v. Lowry**, 301 U. S. 242, 57 S. Ct. 732 (1937); **Lanzetta v. New Jersey**, 306 U. S. 451, 59 S. Ct. 618 (1939); **Stromberg v. California**, 283 U. S. 359, 51 S. Ct. 532 (1931); **Winters v. New York**, 333 U. S. 507, 68 S. Ct. 665 (1948).

to do in Federal elections. This was clearly demonstrated by an *Amicus Curiae* Brief filed in the Court below by the American Federation of Labor and Congress of Industrial Organizations. In that Brief it is stated (at p. ii) that "many labor unions have set up political organizations as an integral subdivision of the union itself. These political arms of organized labor serve a dual function: utilizing dues moneys, they engage in educational activity directed at the union's members, and utilizing voluntary donations, which are kept in separate segregated funds, they channel the flow of contributions and expenditures in connection with federal elections." Thus, it is seen these voluntary donations are far more identified with the union than was the Voluntary Fund in the instant case. This is probably due to the fact that the Voluntary Fund here was organized pursuant to the carefully considered advice of competent labor lawyers. We respectfully submit that this Court should not leave the statute interpreted in such an indefinite state.

C. *Fifth Amendment—Discrimination.* Encompassed within the due process clause of the Fifth Amendment is the prohibition against unjustifiable arbitrary and discriminatory governmental action.[8] Section 610, as construed by the district Court, is such an unjustifiable discrimination as to violate the due process clause of the Fifth Amendment. Under the Court's interpretation, persons of the laboring class are practically prohibited from group political action in any form, whereas many other groups of people with mutual interest are given free rein to influence elections. For example, corporate officials, other wealthy employer type persons and their families

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[8] **Schneider v. Rusk**, 377 U. S. 163, 168, 84 S. Ct. 1187 (1964); **Bolling v. Sharpe**, 347 U. S. 497, 74 S. Ct. 693 (1954), opinion supp., 439 U. S. 294, 75 S. Ct. 753 (1955); **Hirabayashi v. United States**, 320 U. S. 81, 100, 63 S. Ct. 1375 (1943); **Nichols v. Coolidge**, 274 U. S. 531, 542, 47 S. Ct. 710 (1927).

make large political contributions through such organizations as the National Association of Manufacturers and the Chamber of Commerce. These management and business associations represent the counterpart to union members' separate voluntary political funds. Yet, the counterpart of the union members voluntary fund are nowhere prohibited by federal law from making astronomical group political donations to elect hostile candidates to the labor movement and to pass legislation injurious to labor.

The impact of unorganized individuals of ordinary means on politics is very little, which necessitates association and central direction. Unions, which are associations of working men with common interests, have been political active in varying degrees since their formation. Unions have influenced social and economic reform both in the corporate plant and in the governmental process. Political participation was necessary for union birth and is still essential to union survival. **Machinists v. Street,** *supra*, 367 U. S. 740, 812-816, 81 S. Ct. 1784 (1961, Frankfurter dissent); **United States v. C. I. O.,** *supra*, 335 U. S. 106, 144, 68 S. Ct. 1349 (1948, Rutledge concurring). As Mr. Justice Frankfurter stated in **Machinists v. Street,** *supra*, at 814-815: "It is not true in life that political protection is irrelevant to, and insulated from, economic interests. * * * Neither is it true for labor."

Moreover, there are a myriad of other groups and associations not restricted by Section 610, which, although not traditionally opposed to labor, present tangible disadvantages to labor. The American Medical Association for instance, spent more than three and one half million dollars to fight medicare in the 1950 campaign. Hyde & Wolff, **The American Medical Association: Power, Purpose and Politics in Organized Medicine,** 63 Yale L. Journ. 938, 1012-17 (1954).

If laboring people with mutual interests may be lawfully prohibited from pooling their financial resources for po-

litical purposes, thus it should follow that other groups with mutual interests may also be prohibited from doing so. Yet this Court has said that such associations are protected by the Constitution in pooling and spending their money for political purposes. See e. g., **N. A. A. C. P. v. Button**, 371 U. S. 415 (1963).

Petitioners submit that this Court should review Section 610's inherent inequality, particularly in view of the lower Courts unwarranted enlargement thereof.

D. *Article 1, Sec. 2 and Seventeenth Amendment.* A blanket prohibition of union members associating and pooling their financial resources for political expression through their chosen leaders also abridges the constitutional right of the defendants and all union members to choose their federal representatives. The provisions of Article I, Section 2, and of the Seventeenth Amendment to the Constitution specifically confirm the right of the people to elect Congressmen and Senators. Thus, the right of qualified voters to choose their congressional representatives is given federal constitutional protection. **Ex parte Yarborough**, 110 U. S. 651, 4 S. Ct. 152 (1884); **Wiley v. Sinkler**, 179 U. S. 58, 21 S. Ct. 17 (1900); **Swafford v. Templeton**, 185 U. S. 487, 22 S. Ct. 783 (1902); **United States v. Mosely**, 238 U. S. 383, 35 S. Ct. 904 (1913); **United States v. Classic**, 313 U. S. 299, 61 S. Ct. 1031 (1941); **United States v. Saylor**, 322 U. S. 385, 64 S. Ct. 1101 (1944); **Smith v. Allwright**, 321 U. S. 649, 64 S. Ct. 757 (1944); **Gray v. Sanders**, 372 U. S. 368, 83 S. Ct. 801 (1963); **Wesberry v. Sanders**, 376 U. S. 1, 84 S. Ct. 526 (1963).

The Courts have held the following to be attributes of the right to vote which Congress may protect, either by application of criminal sanctions or provision for civil relief:

(a) The right to vote, either in a general election or in a primary, which is an integral part of the electoral process (**Ex Parte Yarborough**, *supra*; **Wiley v. Sinkler**, *supra*; **Swafford v. Templeton**, *supra*; **Smith v. Allwright**, *supra*).

(b) The right to have the force of the vote protected against ballot stuffing (**United States v. Saylor**, *supra*; **Ledford v. United States**, 155 F. 2d 574 (6th Cir. 1946), cert. denied, 329 U. S. 733), or against the votes of unqualified voters (**United States v. Wilson**, 72 F. Supp. 812 (W. D. Mo. 1947)), or against dilution by disapportioned districts (**Gray v. Sanders**, *supra*; **Wesberry v. Sanders**, *supra*).

(c) The right of a qualified voter to register (**United States v. Ellis**, 43 F. Supp. 321 (W. D. S. C. 1942)).

(d) The right to sit on an election board, or to act as judge, inspector or poll clerk at an election for Congressman or Senator (**United States v. Aczel**, 219 Fed. 917 (D. Ind. 1915)).

The constitutional right of a qualified voter to make an effective choice of Congressional representatives requires more than mere protection of the mechanics of the casting and counting of ballots; it requires group political action.

In summary, Section 610 as construed and applied as well as on its face establishes a most dangerous departure from the American tradition of group political activity. As Mr. Justice Rutledge stated with respect to Section 610 in the **CIO** case, *supra*, 335 U. S. at 147, "the accepted principle of majority rule which has become a bulwark, indeed perhaps the leading characteristic, of collective activities is rejected in favor of atomized individual rule and action in matters of political advocacy . . ." Manifestly, a nation cannot maintain effective democratic government if every individual voter must act alone. It is

only through association in groups that he can further his general economic interests and hope to achieve any political effectiveness in our complex modern society. As this Court said in **Sweezy**, *supra*, 354 U. S. at 250: "Exercise of these basic freedoms [of political expression] in America has traditionally been through the media of political associations." Indeed, it is submitted that our tradition of group political activity embodies a fundamental constitutional right. Congressional power to guard the free exercise of the civil rights of voters cannot be converted into Congressional power substantially to destroy or impair them. Yet, this is the immediate effect of this statute as construed and applied on the freedom of working men and women to protect their interests as union members. It deprives union members of their only organized means of protection of their interests in many of the most important political issues of the day.

2. *Construction of Section 610, Title 18, U. S. C.* Because Section 610 only prohibits contributions by Labor Unions, it was incumbent on the Government to prove that the monies of the Voluntary Fund were in fact monies of Local 562. The Government, however, readily admitted that the Fund did not appear on its face to be a fund of the Local.

Thus, the indictment alleged that the Pipefitters Voluntary, Political, etc., Fund "was a fund of defendant Local 562" (Paragraph 7). But it affirmatively alleged that the Voluntary Fund was a "special fund" which had "the appearance of being a wholly independent entity" (Paragraph 10; see also Paragraph 16). Nowhere did the indictment allege that the funds expended or contributed come from dues or the general funds of the Local, and there was no evidence of such. Further, a reading of the indictment as a whole showed that the funds expended did not come from union dues, but were collected and main-

tained separate and apart from the dues structure of the Local (see Paragraphs 7, 10, 11, 13, 15, 16), as the evidence also showed. The indictment did not allege that the payments were involuntary nor that the contributors did not know that their contributions were to be used for political purposes. Though the separate Fund and its political contributions were widely publicized for many years, the Government claimed that it was maintained separate from the union as a desire to conceal that it was union money, and that it in fact was the money of Local 562.

Certainly the evidence was insufficient to prove that the monies of the Voluntary Fund were monies of Local 562 in the light of the legislative history of Section 610 which shows a clear legislative intent to exclude a separate union political fund from the orbit of Section 610 (93 Cong. Rec. 6437-47).

Not only were the contributors to the Voluntary Fund in the instant case fully aware that their donations were to be used for political purposes, but also there was no minority among them. They were all Democrats and favorable to the Democratic candidates to whom the contributions were made. The one Republican who testified had always refused to contribute to the Voluntary Fund.

Although the District Court instructed the jury that it could find that the monies of the separate Fund were union money even though all the contributions to it were made voluntarily, we submit that if, on the contrary, the contributions to the separate Fund had been coerced, this would not convert the money into union ownerships. If so, a corporation would be guilty of making a political contribution if it coerced an officer of the company into making a direct political contribution from his own personal assets. Further such corporation would also be guilty

of making a political contribution if it induced a supplier into making a political contribution by threats of boycott.

We respectfully submit that the evidence wholly failed to establish a conspiracy to violate Section 610. On the contrary, the evidence showed that the defendants and other union members created a political organization, parallel to the Local, in the manner in which Congress intended to approve, to accept direct voluntary contributions to be expended for political and other purposes.

3. *The jury's special finding.* The jury in its verdict found the petitioners guilty as charged in the indictment and further found "that a willful violation of Section 610 of Title 18, United States Code, was not contemplated." The panel decision of the United States Court of Appeals for the Eighth Circuit held that the jury's verdict did not lack essential elements of conspiracy under 18 U S. C., § 371, stating:

> "When the verdict is read in light of the applicable law and the court's instructions, we are satisfied that the jury by its verdict intended to and in fact did convict the defendants of the conspiracy charged."

The reasoning behind this holding was that the jury's verdict in finding "that a willful violation of Section 610 . . . was not contemplated" was for the purpose of advising the trial court that petitioners were guilty of conspiracy to commit a misdemeanor for "guiding the court in assessing a permissible penalty." The Court of Appeals, therefore, in affirming the form of the verdict, in effect held that there need not be wrongful intent in the crime of conspiracy—that is *scienter* and *mens rea* need not be shown at all in conspiracy.

As such, the decisions of the United States Court of Appeals for the Eighth Circuit in the instant case are directly in conflict with decisions of the Sixth Circuit in

Landen v. United States, 299 Fed. 75, 78-79 (6th Cir., 1924), and the Tenth Circuit in **Cruz v. United States,** 106 F. 2d 828, 830 (10th Cir., 1939). These cases hold that if the substantive act that is conspired to be committed be *malum in se,* intent merely requires knowledge of the relevant facts, so that the parties know what they are planning; but if the substantive act conspired to be committed be not wrongful in itself and merely made unlawful by statute (*malum prohibitum*) conspiracy to violate that statute does not exist without knowledge that the contemplated acts violate the law. See also, **Developments in the Law, Criminal Conspiracy,** 72 Harv. L. Rev. 920, 936-37 (1959); Perkins, **Criminal Law,** 545-46 (1957).

This Court has never decided this important question affecting the administration of criminal justice with respect to conspiracies to violate a law of the United States, which as in the instant case is merely *malum prohibitum.* In 1945, four members of this Court indicated that they thought criminal intent was not required in a conspiracy to commit a substantive offense which does not require criminal intent. **Keegan v. United States,** 325 U. S. 478, 506 (1945) (Stone, C. J., Reed, Douglas, and Jackson, J. J., dissenting). The case at bar presents a singular opportunity for the Court to review and settle the applicable law.

4. *The Court's Instructions.* The Court instructed the jury (A. p. 1116):

> "A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all of other facts and circumstances in evidence, in determining whether

the fund is a union fund **However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money.**" [Emphasis added.]

This instruction was objected to by petitioners for the reason that "voluntariness is an ultimate issue in this case, and if the money was voluntarily paid, then it is not union money" (A. p. 1093). Numerous instructions requested by petitioners dealing with this issue were rejected by the Court. Defs. requested Instructions Nos. S, T, Z, AA, VV, YY (A. pp. 1096-1100). For example, defendants' refused Instruction BB (A. p. 1098) reads:

"The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits money of a labor union from being used for such purposes. In this connection, money contributed by members of a labor union, voluntarily, for the purpose of being used for political purposes with knowledge of such purpose is not money of a labor union. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and that they were made by the members for political purposes then you must find the defendants not guilty."[9]

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[9] The majority opinion of the Court below *en banc* concedes that "at trial appellants requested an instruction submitting the issue of voluntariness, and objected to the instruction which made reference to this question. See Footnote 2, Judge Heaney's dissenting opinion, reported at ... F. 2d ... (8th Cir. 1970). Thus, there can be no doubt that appellants laid the proper foundation in the district court for challenging on appeal the propriety of the submission of the case to the jury" (Appendix, *infra*; p. A. 23).

The instructions were clearly erroneous. The legislative history makes it abundantly clear that a union acting through its officers, agents and members may form a political organization parallel to the union and use union personnel to solicit and spend direct voluntary contributions for federal elections[10] (93 Cong. Rec. 6437-6447). See also **United States v. Auto Workers**, *supra*, 352 U. S. 567, 592; **United States v. C. I. O.**, *supra*, 335 U. S. 106, 123; Comments, 46 Marquette Law. Rev. 364, 366 (1963); Clover, **Political Contributions by Labor Unions**, 40 Texas Law. Rev. 665, 670 (1962).

It is clear that Congress in enacting Section 610, not only was sensitive to the constitutional implications of the statute, but also was aware of the need for labor unions to participate in politics, so long as the dues of a dissenting minority were excluded. The sponsors of the bill readily gave strong assurances to doubting Senators that unions could continue to spend money in politics so long as the dues of a possible minority were protected. Congress was aware of the need for Unions to remain active in politics, and intended that they could do so through their leaders by forming parallel political organizations to obtain and expend direct voluntary contributions for political purposes.

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[10] As Judge Heaney pointed out (Appendix, pp. A. 18-A. 19, *infra*):

"The government acknowledges in its brief that a union acting through its officers, agents and members may form a political organization parallel to the union and use union personnel to solicit and spend direct voluntary contributions for federal elections. It concedes that COPE and countless other political action groups have been so organized and operated. The difficulty with this acknowledgement is that it comes too late. The trial Court, although requested to, refused to give an instruction embodying this concept. Indeed, the thrust of its direction was that the very participation of union officers and agents in the organization and operation of the political fund was evidence of impropriety."

The three dissenting judges in the Court below held that the instructions were prejudicially erroneous. The four-majority did not rule on this question. Thus, no Judge of the Court below has ever held that the instructions were correct.

5. *The refusal of the Court below to Rule on the correctness of the Instructions.* The majority of the Court of Appeals *en banc sua sponte* refused to rule on the question as to whether the District Court's instructions were erroneous. Indeed, it held that it could not legally do so because the question had not been raised specifically by petitioners in their original brief, although it had been raised, with the consent of the Court and without objection by the Government, in a Supplemental Brief filed with the Court *en banc* before the oral arguments. In so holding, the decision of the Court below *en banc* is in direct conflict with this Court's decisions in **United States v. Congress of Industrial Organizations**, *supra*, 335 U. S. 106, 110, 125; **United States v. International Union United Automobile Workers of America**, *supra*, 352 U. S. 567, 590-592.

CONCLUSION

For the reasons stated herein, we respectfully submit that the Petition should be granted.

Respectfully submitted

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APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,466

APPENDIX

Appellee,

No. 562,

Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

(June 8, 1970.)

Before Van Oosterhout, Chief Judge.

Defendants Papermakers Local Union No. 562, Lawrence L. Callahan, John L. Lawler and George Seaton were tried by a jury on an indictment charging them with conspiracy under 18 U.S.C.A. § 371 to violate 18 U.S.C.A. § 610 which prohibits labor organizations from making contributions and expenditures to candidates for federal offices. Each defendant was found guilty by the jury. Under instructions given, the jury determined a willful violation of § 610 was not contemplated. The union was fined $5,000. The individual defendants, who were officers of Local 562, were each sentenced to one year imprisonment and fined

APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,466.

United States of America,
Appellee,
v.
Pipefitters Local Union No. 562, etc., et al.,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

[June 8, 1970.]

VAN OOSTERHOUT, Chief Judge.

Defendants Pipefitters Local Union No. 562, Lawrence L. Callanan, John L. Lawler and George Seaton were tried by a jury on indictment charging them with conspiracy under 18 U.S.C.A. § 371 to violate 18 U.S.C.A. § 610 which prohibits labor organizations from making contributions and expenditures to candidates for federal offices. Each defendant was found guilty by the jury. Under instructions given, the jury determined a willful violation of § 610 was not contemplated. The union was fined $5,000. The individual defendants, who were officers of Local 562, were each sentenced to one year imprisonment and fined

$1,000. All defendants have taken a timely appeal from their conviction and sentence.

As grounds for reversal, all defendants urge prejudicial errors were committed by the trial court in the following respects:

I. Failure to sustain defendants' motions for acquittal made at the close of the government's case and renewed at the close of all of the evidence based upon the grounds: (1) That the evidence introduced in the case was insufficient to sustain a conviction. (2) There was a material and prejudicial variance between the allegations of the indictment and the proof offered.

II. Failure to hold that § 610 as construed and applied by the court violates rights guaranteed defendants by the First, Fifth, Sixth and Seventeenth Amendments to the Constitution of the United States.

III. Failure to hold that the provision in the jury verdict that a willful violation of § 610 was not contemplated requires an acquittal of all defendants.

We affirm the convictions for the reasons hereinafter set out.

BACKGROUND.

Section 610 to the extent here pertinent reads:

> "It is unlawful for any . . . labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices. . . ."

The origin, legislative history and purpose of § 610 is discussed in detail in *United States* v. *C.I.O.*, 335 U.S. 106,

and in *United States* v. *International Union,* 352 U.S. 567. It is pointed out that Congress in 1907 enacted a statute making it unlawful for any corporation to make a money contribution in connection with an election for federal office in furtherance of the public interest for free elections. Such prohibition was later extended to labor organizations and this legislation in its present form is found in § 610. With respect to corporations, the Court in *United States* v. *C.I.O.* states:

> "This legislation seems to have been motivated by two considerations: First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders." 335 U.S. 106, 113.

With respect to extending the legislation to labor organizations, the Court in the same case observes:

> "Its legislative history indicates congressional belief that labor unions should then be put under the same restraints as had been imposed upon corporations. It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." 335 U.S. 106, 115.

Mr. Justice Rutledge, in reviewing the legislative history of the extension of the Corrupt Practices Act to labor organizations, indicates:

> "[I]n one important respect the history again is clear, namely, that the sponsors and proponents had in mind three principal objectives.
>
> "These were: (1) To reduce what had come to be regarded in the light of recent experience as the undue

and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections and of official conduct ensuing from the choices made in them against the use of aggregated wealth by union as well as corporate entities; and (3) to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views. Shortly, these objects may be designated as the 'undue influence,' 'purity of elections,' and 'minority protection' objectives. These are obviously interrelated, but not identical. And the differences as well as their combination become important for deciding the scope of the section's coverage and its validity in specific application." 335 U.S. 106, 134-35.

THE MOTIONS TO ACQUIT.

Defendants' timely motions to acquit were based on two grounds: (1) A material variance between the allegations of the indictment and the proof, and (2) the insufficiency of the evidence to support the convictions. Defendants urge that the indictment was insufficiently clear with respect to the source of the funds used in the conspiracy charge. Such contentions lack merit.

The indictment is lengthy and elaborate. Sixty-one overt acts are charged. The indictment charged that the defendants established the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund, hereinafter called the fund, to have the appearance of being a wholly independent entity separate from Local 562 and thereby conceal the fact that Local 562 would make contributions and expenditures in connection with certain elections. The indictment outlined defendants' complicated scheme to conceal the true nature of their activity and concluded by alleging that such activity amounted to an unlawful use of union funds contrary to § 610.

In *United States* v. *Lewis Food Co.*, 9 Cir., 366 F.2d, 710, 713, the court holds, "the allegation in the indictment that the corporation made an 'expenditure' for the stated purpose, necessarily infers an allegation that general corporate funds were used."

The failure of the indictment to allege that the payments to the fund were involuntary is not fatal. The gist of the government's claim as reflected by the indictment is that the money in the fund is in truth and in fact money belonging to Local 562.[1] If such allegation is established by

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1 While instructions given by the court to the jury are not relevant or controlling in determining the law to be applied in ruling upon motions for acquittal, it appears extremely likely that the court would apply the law as set forth in its instructions in passing upon the motions. Included in the instructions i the following:

"You will note that Section 610 prohibits contributions by labor organizations for use in connection with an election for a federal office. It does not prohibit any person from making or agreeing to make such contributions or setting up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization. That is, the statute is not violated unless the [2,070] contribution is in fact, and in the final analysis made by the labor organization.

"In this case evidence was offered by the Government to the effect that funds were contributed to or on behalf of candidates for federal office and that such funds were paid out upon checks drawn upon the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund. It is necessary, therefore, that the evidence establish that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union. As to this issue, the defendants contend that the fund in question was a bona fide entity separate and apart from the union, established by the voluntary good faith act of members of the pipefitters Local 562 and others, from which contributions to candidates were made on behalf of the persons who created the fund and not on behalf of the union. On the other hand, the Government contends that the fund was a mere artifice or device set up by the defendants and others as a part of the alleged conspiracy to give the outward appearance of being an independent and separate entity but in fact constituting a part of union funds.

* * * * * * *

"A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Edu-

the evidence, the issue of whether the payment to the fund is voluntary or involuntary is not controlling.

Of course as observed by the court in its instructions, the issue of whether the payments to the fund were voluntary is relevant and material on the issue of whether the fund is the property of Local 562. Other considerations such as the intention of the donors as to ownership and control of the fund also bear upon the issue.

We now pass to the issue of the sufficiency of the evidence to support the convictions. The evidence must be viewed in the light most favorable to the party prevailing in the jury trial, here the government. *Glasser* v. *United States*, 315 U.S. 60, 80. When the evidence is so viewed, we find ample evidentiary support for the jury verdict.

The essential elements of a § 610 offense are (1) contribution or expenditure, (2) by a labor organization, (3) for the purpose of active electioneering (4) in connection with an election for named federal offices described in the statute. It is virtually undisputed that elements (1), (3) and (4) are clearly established. The controversy relates to whether the contributions or expenditures were made by a labor organization. A labor organization is defined in § 610. Local 562 clearly fits the description of a labor organization. Thus if the numerous substantial contributions made to federal office candidates were made by Local 562, the contributions were made by a labor organization. On the other hand if the voluntary fund is a separate and distinct entity and it made the contribu-

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cational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

tions, no violation of § 610 would exist as the voluntary fund as a separate entity would not constitute a labor organization.

Contributions alleged to be voluntary by members of Local 562 and members of other unions working within its jurisdiction aggregating $1,230,968 were made during the indictment period (1963-1968). The proceeds of such collections were maintained in a separate bank account of the fund. Disbursements out of the fund for aid of candidates for federal office during the indictment period aggregated $151,412. There is substantial evidence to support a jury finding that the fund was not a bona fide separate and distinct entity but was in fact a device set up to circumvent the provisions of § 610 and that the fund constituted union money. We will not attempt to set out the voluminous evidence, much of which is conflicting, in detail. Assessments had been made for the political fund since 1949. In 1962, the assessment for the fund for members of Local 562 and those working within its jurisdiction was 50¢ per man for each day worked. Local 562 abandoned collections through assessments in 1963.

In 1962, the union launched a campaign for check off of dues by employers of its members. Originally it was contemplated, as shown by the union minutes, that the check off be for 4% of the wages paid plus dues with 1½% included in the 4% going to the fund.

The local deliberately kept its membership relatively small so that advantageous employment would be available at all times for its members. It had jurisdiction over work covering a large part of the state of Missouri. Local 562 provided a considerable amount of work for members of other locals at more favorable rates of pay than prevailed in the jurisdiction of the locals. The attorney for the union advised the union that he was fearful that if Local 562 accepted dues and assessments from non-members it would

be required to accept them into membership in Local 562. He also recommended that the contribution to the fund not be collected by check off and that voluntary pledge cards for the fund be obtained from those working on Local 562 projects and that the funds be raised through voluntary contributions. Thereafter Local 562 voted to reduce the assessment from 4% to 2½% of the wages and further that no assessments be made against non-members. Signatures of non-members and members working on Local 562 projects were obtained on voluntary contribution cards under which the signers who were members of Local 562 agreed to contribute $1.00 per 8 hour working day to the fund, with non-members agreeing to contribute $1.50 per 8 hour day. The extra 50¢ per day for non-members was equivalent to the cancellation of the 50¢ per day assessment which was abandoned. Subsequently the contribution of non-members was raised to $2.00 per working day.

When the assessment of members was raised in 1966 from $1.00 to $1.50 per day, contributions to the voluntary fund were reduced from $1.00 to 50¢ per day leaving the total combined assessment and contribution to tho voluntary fund in the same total figure as previously existed.

The non-members of Local 562 working on its projects were not charged the customary $8.00 per month travel card assessment. However, their contribution to the fund substantially equalled the combined assessment and voluntary contribution made to the fund by members.

The contributions to the fund were generally collected regularly by the foreman on the job site in substantially the same manner in which assessments had previously been collected. Collection sheets were provided with columns containing the names of the employees, the number of hours worked and the amount paid to the fund. The purpose of keeping the records was so that the officers would know who contributed to the fund and how much. Reasons

such as sickness or vacation were placed on the report sheet with respect to persons from whom no assessment was collected for the period covered. On some reports reference is made to back assessments.

A number of foremen testified that they did not know what would happen if the contribution was not paid because all of the members working under them regularly made payments to the fund.

There is evidence that a limited number did not make a contribution to the fund and that no reprisals were taken against them. Ordinarily such failure to pay was taken up with the union officials and instructions were received by the collectors not to press for payment. There is also testimony that the people working on the projects considered their employment advantageous and felt that they had no choice except to make the contribution. It would appear to be unrealistic to believe that such a large number of workmen would make such substantial voluntary contributions to be used for political purposes unless they felt that their job security required them so to do.

The union received national recognition because of its generous political contributions. The minutes of the local meeting of June 9, 1964, reflect that the union president had been introduced to President Johnson as "the representative of the most active political membership in the United States."

The fund was freely used for making payments to serve many other union purposes. We are satisfied that all of the essential elements of conspiracy charged are supported by substantial evidence.

CONSTITUTIONAL ISSUES.

Substantial and difficult problems are presented by the constitutional issues raised by the defendants. A minority of the Court in *United States* v. *C.I.O.*, supra, and *United*

States v. *International Union*, supra, expressed the view that § 610 was unconstitutional. The majority by reason of its interpretation of the statute did not reach the constitutional issue. We shall treat separately the constitutional issues raised.

A. FIRST AMENDMENT.

It is clear that the First Amendment protects the freedom of association, *NAACP* v. *Alabama*, 357 U.S. 449, and that the activities of a labor union are within the scope of this protection. *United Mine Workers* v. *Illinois State Bar Ass'n*, 389 U.S. 217. Since 18 U.S.C.A. § 610 regulates the activities of a labor union, it must be evaluated in light of First Amendment principles.

Finding that particular activities are within the purview of the First Amendment does not necessarily mean that they are free from governmental regulation. The rights of association are not absolute and may be regulated by the government in certain instances. *Dennis* v. *United States*, 341 U.S. 494; *Garner* v. *Board of Public Works*, 341 U.S. 716.

In order to determine the validity of governmental regulation which touches constitutionally protected rights, the Court in *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 51, indicated that "that perforce requires an appropriate weighing of the respective interests involved." Therefore, a court must balance the interest of the government in the regulation against the interest of the individual and the organization in their freedom of association. Since the value of the freedom of association is considered extremely high in our society, if a governmental regulation of association is to prevail against constitutional attack, the government must demonstrate a "compelling" interest in the regulation in question. See *Bridges* v. *California*, 314 U.S. 252; Cf. *Sherbert* v. *Verner*, 374 U.S. 398. There-

fore, in order to determine the validity of 18 U.S.C.A. § 610, the court must find a compelling governmental interest which overrides the interest of the association in the activities prohibited. There is such a compelling interest.

Since it is possible for a person to be required to join a union as a condition of employment, one of the purposes for the passage of 18 U.S.C.A. § 610 was to "protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views." Mr. Justice Douglas concurring in *International Association of Machinists* v. *Street,* 367 U.S. 740, thought this to be an extremely troublesome problem. He said:

> "[M]embership in a group cannot be conditioned on the individual's acceptance of the group's philosophy. Otherwise, First Amendment rights are required to be exchanged for the group's attitude, philosophy or politics. I do not see how this is permissible under the Constitution." 367 U.S. 740, 777.

Congress in passing 18 U.S.C.A. § 610 was attempting to protect the individual union member's right to his own political views and the right to support or not to support them through money contributions. In light of the substantial interest each individual has in his own political activities, it follows that Congress in passing the legislation was responding to a compelling interest.

Even when it is found that the government has acted to protect a compelling interest, the First Amendment requires further analysis. To this point the Court in *Shelton* v. *Tucker,* 364 U.S. 479, 488, said:

> "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be narrowly achieved. The breadth of legislative abridgement must be viewed in

> light of less drastic means for achieving the same basic purpose."

The issue under this analysis is whether 18 U.S.C.A. § 610 narrowly achieves the legitimate Congressional purpose without needlessly treading on constitutional rights.

When § 610 is given the interpretation previously discussed in this opinion, it does not go beyond protecting the valid governmental interest and infringe unnecessarily on constitutional rights. Separate voluntary political associations by union members are not in any way proscribed by the statute. Therefore, § 610 is not unconstitutional under the First Amendment.

B. VAGUENESS.

It is of course necessary to evaluate § 610 in relation to the concept of constitutional vagueness. This principle was set out in *United States* v. *Harriss*, 347 U.S. 612, 617, where the Court said:

> "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

The Court in *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 287, added:

> "The vice of unconstitutional vagueness is further aggravated where, . . . the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution."

The vagueness problem therefore is whether a person could know from reading § 610 what is proscribed by its terms.

One matter which was previously pointed out was that substance rather than form governs the question of whether a particular contribution or expenditure came from a "labor organization." Such approach requires a court or jury to evaluate the totality of the circumstances and determine who in fact made the contribution or expenditure—a separate and distinct organization or a § 610 labor organization. The legality of the conduct of a labor organization making contributions or expenditures is not difficult to determine. A labor organization can predict what its officials and employees may do by evaluating the organization's duty under § 610 and not allow its officials and employees to engage in conduct which is inconsistent with this duty.

C. DUE PROCESS—EQUAL PROTECTION.

The due process clause of the Fifth Amendment includes within it a concept of equal protection. *Bolling* v. *Sharpe*, 347 U.S. 497. Therefore, the federal government, as well as the states, is not allowed to pass legislation which makes arbitrary classifications. The appellants argue that § 610 makes an arbitrary classification because it prevents members of the working class from political action whereas members of richer classes are not so prohibited, even though banks and corporations are also prohibited from making political contributions and expenditures. The argument is that the corporate executives personally make political contributions which have an impact on the political process, and § 610 prohibits members of the working class from aggregating their funds to have a similar impact. The problem with this argument is that § 610 does not prohibit working men from such activity. Section 610 only prohibits them from being forced into it. Therefore, § 610 does not create a classification which is subject to an equal protection claim.

D. RIGHT TO VOTE FOR SENATORS AND REPRESENTATIVES.

It has been argued that § 610 abridges the right to vote for Congressmen and Senators. This argument is based on the assumption that § 610 prohibits any labor group from associating and engaging in political activities. As previously pointed out this is not the proper construction of § 610. When § 610 is given the interpretation as described in this opinion, this argument totally lacks merit.

EFFECT OF JURY FINDING THAT A WILLFUL VIOLATION OF § 610 WAS NOT CONTEMPLATED.

The signed jury verdict Form B returned by the jury found each defendant guilty as charged in the indictment and then went on to say, "We further find that a willful violation of Section 610 of Title 18, United States Code, was not contemplated."

Defendants urge that the quoted sentence requires an acquittal on the conspiracy charge. We do not agree.

Verdict Form B together with Form A finding the defendants guilty without containing the sentence hereinabove quoted were submitted to the court under an instruction that "Form B may be used by you only in the event you find one or more of the defendants guilty of the willful conspiracy charged and further find that the conspiracy of which said defendant is found guilty did not contemplate a willful violation of § 610."

Section 610 carries a penalty of a fine not to exceed $5000 for a corporation or labor organization and not to exceed $1000 or one-year imprisonment for individual defendants. The statute further provides that if the violation

was willful the penalty is a fine up to $10,000 and imprisonment up to two years. Eighteen U.S.C.A. § 371 under which defendants were tried and convicted contains a provision that if the offense, the commission of which is the object of the conspiracy is a misdemeanor only, the punishment shall not exceed the maximum imposed for the misdemeanor. Eighteen U.S.C.A. § 1 defines a misdemeanor as an offense carrying a penalty of one year or less imprisonment. Thus it would appear that the clear purpose of the instruction and verdict Form B was to advise the court whether defendants were guilty of conspiracy to commit a misdemeanor or a felony for the purpose of guiding the court in assessing a permissible penalty.

The court in its instructions properly set forth the elements of the conspiracy including the necessity of proving that each defendant knowingly and willfully participated in the conspiracy to violate § 610. Included in the instructions is the following:

> "The crime charged in this case requires proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the Government must prove that the defendant knowingly, willfully and purposely did an act which the law forbids. Such intent may be determined from all the facts and circumstances shown by the evidence.
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> • • • • • • •
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> "An act is done 'willfully' if done voluntarily and purposely and with the specific intent to do that which the law forbids; that is to say, with bad purpose either to disobey or to disregard the law."

The necessity of proving willfulness as an element of the conspiracy is repeated in various places in the instructions.

When the verdict is read in the light of the applicable law and the court's instructions, we are satisfied that the

jury by its verdict intended to and in fact did convict the defendants of the conspiracy charged.

It is also of some significance that the defendants took no exception to verdict Form B or the instructions relating to its submission. Defendants were in no way prejudiced by the submission of Form B. The jury finding in the last sentence of the form in reality amounted only to a finding that the conspiracy related to a misdemeanor rather than a felony and defendants were thus benefited by such finding by being exposed only to the lesser sentence provided in § 371 for conspiracy, the object of which is a misdemeanor.

Defendants have made no attack on this appeal upon any instructions given by the trial court or to the evidentiary rulings. We conclude that the defendants have had a fair trial and that they have failed to establish that the court has committed any prejudicial error.

The judgments appealed from are affirmed.

HEANEY, Circuit Judge, dissents and reserves the right to file a dissenting opinion setting out his views.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,466.

United States of America,
Appellee,

v.

Pipefitters Local Union No. 562, etc., et al.,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

[July 17, 1970.]

Before VAN OOSTERHOUT, Chief Judge; BLACKMUN and HEANEY, Circuit Judges.

HEANEY, Circuit Judge, dissenting.

While I share the view of the majority that the indictment was not fatally defective, I would reverse and remand to the trial court with instructions to it to grant the defendants a new trial. See, *United States* v. *Lewis Food Company*, 366 F.2d 710 (9th Cir. 1966).[1] At this new trial, the principal question would be whether, in the light of all the evidence, the contributions to the federal candi-

1 "All that is required of an indictment is that it be a plain, concise and definite written statement of essential facts constituting the offense charged. Rule 7(c), Federal Rules of Criminal Procedure; *Rood* v. *United States*, 8 Cir., 340 F.2d 506, 510. With respect to the use of general corporate funds this indictment meets these requirements. Entry of the plea of not guilty, therefore, gave rise to a question of fact as to the source of the corporate funds. When the Su-

dates were made from funds which could fairly be said to have been voluntarily contributed by members and non-members with knowledge of the fact that all or part of their contribution would be used for political purposes. See, *United States* v. *International Union,* 352 U.S. 567, 592 (1957); 93 Cong. Rec. 6437-6440 (1947).

There is evidence in this record indicating that the contributions to the Pipefitters' fund were, in the above sense, knowingly and voluntarily made. There is also substantial evidence to the contrary. But the jury was specifically instructed that it could find the defendants guilty even if it believed all of the contributions were voluntarily made.[2] Such an instruction was, in my view, erroneous.

The government acknowledges in its brief that a union acting through its officers, agents and members may form a political organization parallel to the union and use union personnel to solicit and spend direct voluntary contributions for federal elections. It concedes that COPE and countless other political action groups have been so organized and operated. The difficulty with this acknowledgement is that it comes too late. The trial court, although requested to, refused to give an instruction embodying

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preme Court, in the *Auto Workers* case, asked (352 U.S. at 592, 77 S.Ct. at 542): '[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?' The Court was referring to questions of fact which must be resolved at the trial level and was not referring to any inadequacies in the indictment."

United States v. *Lewis Food Company,* 366 F.2d 710, 713 (9th Cir. 1966).

2 "A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

this concept. Indeed, the thrust of its direction was that the very participation of union officers and agents in the organization and operation of the political fund was evidence of impropriety. Compare, *Machinists Union* v. *Street*, 376 U.S. 70 (1961).

The government contends in its brief that the contributions to the fund were in fact assessments, were in fact part of the general dues' structure and were in fact involuntarily made. These may indeed be the facts and if the jury had made such a finding, a violation of Section 610 would have been made out. But again, this the jury was not requested to so find. It was instructed to answer the broader question of whether the contributed funds constituted a part of the Union funds. Nineteen facts and circumstances were listed as bearing on the answer to this question.[3] Some of the facts and circumstances were rele-

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3 "1. Whether or not payments to the fund were routinely made at regular intervals at job sites,

"2. Whether or not payments to the fund were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union,

"3. Whether or not the payment to the fund was determined by a formula based upon the amount of hours or overtime hours worked upon a job under the supervision of the union,

"4. Whether or not payments to the fund were at one rate for 562 members and at a different rate for members of other unions,

"5. Whether or not payments to the fund began, continued and terminated with employment on a job under the jurisdiction of the union,

"6. Whether or not monies of the fund were used to provide benefits to union members in their capacity as members,

"7. Whether or not payments to the fund by members of other unions were in lieu of payments to the union in the form of travel card dues in the amount of eight dollars per month,

"8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union pursuant to Section 2.05 of its Constitution and by-laws,

"9. Whether or not payments to the fund were made by those affiliated with the union to the general exclusion of other classes of persons or organizations,

vant to the issue of knowledge and voluntariness and others, irrelevant. One example of the latter was the instruction that the jury could consider whether the payments to the fund were routinely collected by the Union Stewards and agents of the Union at the job site.

The government further contends that the political funds were spent by the individual defendants arbitrarily and without consultation with the contributors. There is some evidence in the record to support this contention. Although such a practice is of questionable legality and is undesirable and undemocratic, it constitutes no violation of Section 610.

The argument is also made by the government that at least one official of the fund diverted a portion of the funds collected for political purposes to his personal use.

"10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

"11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

"12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

"13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

"14. Whether or not some persons who worked under the jurisdiction of Local 562 did not contribute to said fund,

"15. Whether or not the monies of said fund were used in part to promote activities which were prohibited to Local 562 by its Constitution and By-Laws,

"16. Whether or not said fund was established and maintained pursuant to the advice of counsel,

"17. Whether or not the monies of said fund were reported to the Department of Labor on the LM-2 forms, which required the reporting of monies of Local 562,

"18. Whether or not expenditures from the fund were under the control of the union and its officers,

"19. Whether or not records used in the collection of the payments to the fund are similar to those employed from time to time by the union in the collection of its regular dues and assessments."

While this act may also have been illegal and reprehensible, it was not a violation of the statute.

Finally, the government contends on appeal that the fund was used to provide benefits to some of the members of the Union. There is again evidence in the record to support this contention but the fact of the matter is that the fund was established for educational, legislative, charitable and defense as well as political purposes. And as I read Section 610, there is nothing in it which prohibits a union, its officers and agents from soliciting voluntary contributions for political and other purposes so long as those contributing know that all or part of the funds will be used in support of political candidates.

Nothing I have said in this opinion should be taken to indicate that a union or its officers and agents can evade the prohibitions of Section 610 by obtaining contribution cards from contributors indicating that the contributions were voluntarily made for political purposes. The test is whether the contributions are in fact so made.

Because I would remand for a new trial, I find it unnecessary to pass on the First Amendment validity of Section 610. This issue can be reached if the defendants are convicted under proper instructions.

I likewise express no view on the question of whether the jury's finding that a willful violation of Section 610 was not contemplated by the defendants required a reversal on the conspiracy charge. I am confident that on retrial, the verdict forms would eliminate this ambiguity.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,466.

United States of America,
Appellee,

v.

Pipefitters Local Union No. 562, etc., et al.,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri Upon Rehearing in Banc.

[November 24, 1970.]

Before MATTHES, Chief Judge; VAN OOSTERHOUT, MEHAFFY, GIBSON, LAY, HEANEY and BRIGHT, Circuit Judges.

PER CURIAM.

On June 8, 1970, the conviction of Pipefitters Local Union No. 562, Lawrence L. Callanan, John L. Lawler and George Seaton on a charge of conspiracy under 18 U.S.C.A. § 371 to violate 18 U.S.C.A. § 610, which makes it unlawful for a labor organization to make a contribution or expenditure in connection with any election to federal office, was affirmed by a panel of this court consisting of Judges Van Oosterhout, Blackmun and Heaney. Judge Heaney filed a dissent. The opinion is reported at ... F.2d ....

Thereafter on August 19, 1970, a rehearing in banc was granted by a majority vote of the active judges of this court and the judgment affirming the conviction was vacated and set aside. The court in banc on October 14, 1970, heard this case.

The judgments of conviction and sentences imposed are affirmed for the reasons set out in the panel majority opinion filed June 8, 1970. Judgment shall be entered accordingly. Affirmed.

MATTHES, Chief Judge, with whom Judges VAN OOSTERHOUT, MEHAFFY and GIBSON join, concurring.

I join in the affirmance of the judgment of conviction. The course traveled by this appeal in this court, as a result of my brother Heaney's dissenting opinion, motivates me to express my views in regard to procedural aspects of an appeal in the hope that this court, whether sitting en banc or as a panel, hereafter will adhere to what I regard to be deeply entrenched principles applicable to the consideration and disposition of cases by courts of appeals.

From the outset of this case appellants challenged the constitutionality of 18 U.S.C. § 610 and sought dismissal of the indictment on that ground. The validity of the statute was a live issue throughout the trial. Additionally, at trial appellants requested an instruction submitting the issue of voluntariness, and objected to the instruction which made reference to this question. See Footnote 2, Judge Heaney's dissenting opinion, reported at ... F.2d ... (8th Cir. 1970). Thus, there can be no doubt that appellants laid the proper foundation in the district court for challenging on appeal the propriety of the submission of the case to the jury. But appellants, represented by a battery of retained counsel, experienced and skilled in the

defense of criminal cases, on appeal abandoned all errors asserted during the trial and elected to proceed in this court by presenting only issues for review designed to bring about an outright reversal and discharge of the appellants.

Appellants' initial exhaustive brief, consisting of 38 pages, stands as irrefutable evidence that they were consciously and purposefully foregoing any relief on the ground of trial irregularities. Manifestly, they were familiar with the provisions of Rule 28(a), Federal Rules of Appellate Procedure, relating to the contents of the brief of an appellant, and included in their brief a "Statement Of Issues Presented For Review." These issues summarized were:

I. The indictment failed to allege an offense under 18 U.S.C. § 610;

II. Section 610 is unconstitutional because it abridged appellants' and all union members First Amendment rights;

III. Section 610 is unconstitutional because of vagueness;

IV. Section 610 deprives unions and its members of liberty and property without due process, in violation of the Fifth Amendment;

V. Section 610, as construed and applied by the district court, unlawfully abridges the rights of appellants to vote and to choose their senators and representatives in Congress as guaranteed by Article I, Section 2 and the Seventeenth Amendment to the Constitution;

VI. The verdict of the jury negating a willful violation of § 610 required an acquittal on the conspiracy charge.

In the expansive development of the foregoing issues in the argument portion of appellants' brief, there is no hint

or suggestion of error in giving or rejecting instructions. And to remove any doubt as to the precise relief sought by appellants in this court they concluded their brief with this statement:

"CONCLUSION.

For each of the reasons stated herein above, we respectfully submit that the judgment below should be reversed. Each of said reasons requires a reversal without a new trial, and no request is made for a new trial. The relief sought, and impelled by said reasons, is a reversal and discharge of the defendants."

The majority of the original panel, which affirmed, squarely met and considered the issues presented by appellants. But, notwithstanding the obvious, namely, that appellants had deliberately and consciously elected to abandon and waive any and all claims of prejudicial trial errors, my brother Heaney, sua sponte, injected an issue foreign to appellants' brief, faulted the district court for not properly instructing the jury as to whether the contributions to candidates had been voluntarily made, and voted to remand for another trial.

The rules designed to govern appellate procedure clearly delineated in the Federal Rules of Appellate Procedure, and sanctioned by many decisions, convinces me that a court of appeals should confine its review to the issues which an appellant properly raises and presents in his brief. Certainly, the reviewing court should not assume the role of an advocate and engage in the practice of ferreting out errors deliberately and consciously abandoned by an appellant, in order to grant relief not asked for, but in fact specifically disclaimed. Such gratuitous procedure by the reviewing court does not, in my view, comport with the proper and orderly administration of justice.

The salutary purpose of Rule 28(a)(2), Federal Rules of Appellate Procedure, providing that the brief of an

appellant shall contain "[a] statement of the issues presented for review"[1] and of pre-1968 local rules of this court, has been spelled out in meaningful language. This court, speaking through Judge Kimbrough Stone, stated, "[t]he purpose of the rule is to definitely and separately point out the errors complained of in order to clearly *define* and *confine* the issues on appeal." (Emphasis supplied.) *New York Casualty Co.* v. *Young Men's C. Assn.*, 119 F.2d 387, 389 (8th Cir. 1941); Accord, *Cohen* v. *United States*, 142 F.2d 861, 863 (8th Cir. 1944); *Turner County S.D.* v. *Miller*, 170 F.2d 820, 828 (8th Cir. 1948);[2] *Mogis* v. *Lyman-Richey Sand & Gravel Corp.*, 189 F.2d 130, 133;[3] *Chain Institute* v. *Federal Trade Commission*, 246 F.2d 231, 235 (8th Cir. 1957); *Bell* v. *United States*, 251 F.2d 490, 493-94 (8th Cir. 1958).[4] In *McIntosh* v. *United States*, 362 F. 2d 636 (8th Cir. 1966), Judge Blackmun, now an Associate Justice of the Supreme Court, reiterated that specifications of error not urged in brief or appeal are abandoned. Finally, in *Smith* v. *American Guild of Variety Artists*, 368 F. 2d 511; 514 (8th Cir. 1966), Judge Van Oosterhout again recognized the rule and supported the court's refusal to consider a point not raised or briefed with numerous citations. But see *Daclede Gas Co.* v. *N.L.R.B.*, ... F.2d ... (8th Cir. 1970),[5] where Judges Heaney and Lay remanded the case to the National Labor Relations Board for consideration of an issue not raised on appeal. Judge Van Oosterhout dissented on the ground

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1 The Federal Rules of Appellate Procedure became effective July 1, 1968.

2 This case holds that an unargued assertion of error is waived.

3 This case stands for the proposition that contentions of error in the trial court not presented on appeal will be considered as having been abandoned.

4 In the *Bell* case, Judge Van Oosterhout cites numerous cases supporting the rule.

5 This case did not present any constitutional issues.

that since the issue was not raised the cause should not be remanded.

I am not unmindful that the United States Supreme Court has established the principle that "[i]f two questions are raised, one of non-constitutional and the other of constitutional nature, and a decision of the non-constitutional question would make unnecessary a decision of the constitutional question, the former will be decided." *Alma Motors Co.* v. *Timken-Detroit Axle Co.*, 329 U.S. 129, 136, 67 S.Ct. 231, 91 L.ed. 128 (1946); *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 347 (Brandeis, J., concurring); *Clay* v. *Sun Insurance Office*, 363 U.S. 207 (1959).[6] Nor am I unaware of the practice of the Supreme Court of refusing to decide constitutional questions when other grounds of decision can be found in the *record*, whether or not they have been properly raised before the court by the parties. *Neese* v. *Southern Ry.*, 350 U.S. 77 (1955); *Communist Party of U.S.* v. *Subversive Activities Control Bd.*, 367 U.S. 1, 119-20 (1961) (Douglas, J., dissenting).

But, notwithstanding this principle, and with due deference to the teachings of the Supreme Court, the conclusion is inescapable that the practice and procedure in the United States courts of appeals are governed by the Federal Rules of Appellate Procedure.

It is known generally by the federal bench and the members of the legal profession that for a number of years many judges, lawyers and legal scholars recognized a compelling need for uniform rules to govern the practice and procedure in the United States court of appeals. The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, after lengthy,

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[6] In *Clay*, Justice Black states that the principle has never been made a rule and elevated to a position of absoluteness but its application is merely discretionary, to be used under the proper circumstances. 363 U.S. at 222-26 (dissenting opinion).

responsible and deliberate study and consideration, culminated its efforts, and on December 4, 1967, the Supreme Court of the United States, by appropriate order, adopted the Federal Rules of Appellate Procedure. The Supreme Court, in its order of adoption, provided that these rules are to govern the practice in appeals to United States courts of appeals from the United States district courts, and the review of the United States courts of appeals of decisions of specified lower federal agencies. Rule 1 provides that "these rules govern practice in appeals to United States courts of appeals from the United States district courts and the Tax Court of the United States; . . . ."

Thus, the conclusion is inescapable that the Supreme Court has decreed through adoption of the rules that all appeals in the courts of appeals are to be governed by the provisions of the Federal Rules of Appellate Procedure. These rules are easily understood. They mean what they say. They are binding upon every judge of every court of appeals and should be adhered to, not ignored. If courts of appeals are permitted to engage in fashioning remedies according to the dictates of the judges and contrary to the guidelines enunciated in the rules, one of the objectives so long sought and finally achieved—*uniformity of practice and procedure*—will effectively be scrapped.

HEANEY, Circuit Judge, dissenting.

While I share the view of the majority that the indictment was not fatally defective, I would reverse and remand to the trial court with instructions to it to grant the defendants a new trial. See, *United States* v. *Lewis Food Company*, 366 F.2d 710 (9th Cir. 1966).[1] At this

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new trial, the principal question would be whether, in the light of all the evidence, the contributions to the federal candidates were made from funds which could fairly be said to have been voluntarily contributed by members and nonmembers with knowledge of the fact that all or part of their contribution would be used for political purposes. See, *United States* v. *International Union*, 352 U.S. 567, 592 (1957); 93 Cong. Rec. 6437-6440 (1947).

There is evidence in this record indicating that the contributions to the Pipefitters' fund were, in the above sense, knowingly and voluntarily made. There is also substantial evidence to the contrary. But the jury was specifically instructed that it could find the defendants guilty even if it believed all of the contributions were voluntarily made.[2] Such an instruction was, in my view, erroneous.

The government acknowledges in its brief that a union acting through its officers, agents and members may form a political organization parallel to the union and use union personnel to solicit and spend direct voluntary contributions for federal elections. It concedes that COPE and countless other political action groups have been so organized and operated. The difficulty with this acknowledgement is that it comes too late. The trial court, although requested to, refused to give an instruction embodying this concept. Indeed, the thrust of its direction was that the very participation of union officers and

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use of general corporate funds this indictment meets these requirements. Entry of the plea of not guilty, therefore, gave rise to a question of fact as to the source of the corporate funds. When the Supreme Court, in the *Auto Workers* case, asked (352 U.S. at 592, 77 S.Ct. at 542): '[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?' The Court was referring to questions of fact which must be resolved at the trial level and was not referring to any inadequacies in the indictment."

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agents in the organization and operation of the political fund was evidence of impropriety. Compare, *Machinists Union* v. *Street*, 376 U.S. 70 (1961).

The government contends in its brief that the contributions to the fund were in fact assessments, were in fact part of the general dues' structure and were in fact involuntarily made. These may indeed be the facts and if the jury had made such a finding, a violation of Section 610 would have been made out. But again, this the jury was not requested to so find. It was instructed to answer the broader question of whether the contributed funds constituted a part of the Union funds. Nineteen facts and circumstances were listed as bearing on the answer to this question.[3] Some of the facts and circumstances

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2 "A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

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were relevant to the issue of knowledge and voluntariness and others, irrelevant. One example of the latter was the instruction that the jury could consider whether the payments to the fund were routinely collected by the Union Stewards and agents of the Union at the job site.

The government further contends that the political funds were spent by the individual defendants arbitrarily and without consultation with the contributors. There is some evidence in the record to support this contention. Although such a practice is of questionable legality and is

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"8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union pursuant to Section 2.05 of its Constitution and by-laws,

"9. Whether or not payments to the fund were made by those affiliated with the union to the general exclusion of other classes of persons or organizations,

"10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

"11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

"12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

"13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

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"16. Whether or not said fund was established and maintained pursuant to the advice of counsel,

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undesirable and undemocratic, it constitutes no violation of Section 610.

The argument is also made by the government that at least one official of the fund diverted a portion of the funds collected for political purposes to his personal use. While this act may also have been illegal and reprehensible, it was not a violation of the statute.

Finally, the government contends on appeal that the fund was used to provide benefits to some of the members of the Union. There is again evidence in the record to support this contention, but the fact of the matter is that the fund was established for educational, legislative, charitable and defense as well as political purposes. And as I read Section 610, there is nothing in it which prohibits a union, its officers and agents from soliciting voluntary contributions for political and other purposes so long as those contributing know that all or part of the funds will be used in support of political candidates.

Nothing I have said in this opinion should be taken to indicate that a union or its officers and agents can evade the prohibitions of Section 610 by obtaining contribution cards from contributors indicating that the contributions were voluntarily made for political purposes. The test is whether the contributions are in fact so made.

It has been and is my opinnon that 18 U.S.C. §610 is clearly unconstitutional if construed as the majority opinion requires. I am equally convinced, however, that the constitutionality of the statute should not be decided until a conviction is obtained under proper instructions.

On two separate occasions in the last twenty-five years, the Supreme Court has been asked to decide the constitutionality of §610. It has declined to do so on both occasions. In *United States* v. *C.I.O.*, 335 U.S. 106 (1948), the

defendants were indicted under the statute for activities related to the publication and distribution of their weekly union periodical. The District Court dismissed the indictment, holding the statute to be an unconstitutional impairment of First Amendment rights. The government appealed the District Court's ruling under the Criminal Appeals Act, 18 U.S.C.A. §682. On appeal, both sides argued the constitutionality of the act. The Supreme Court, however, affirmed the dismissal of the indictment on the grounds, raised *sua sponte*, that the indictment did not charge an offense within the scope of the statute. The majority opinion noted the parties' preoccupation with the constitutional question, but stated:

> "We do not admit any duty in this Court to pass upon such a contention on an appeal under the Criminal Appeals Act except in cases of logical necessity."

Id. at 110.

Justice Frankfurter, in a concurring opinion, was even more circumspect about deciding the case. He noted, first, Chief Justice Marshall's observation that:

> "No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of a legislative act. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other points, a just respect for the legislature requires that the obligation of its laws should not be unnecessarily and wantonly assailed." (Citation omitted.)

Id. at 125.

Frankfurter went on to argue that the entire case was not ripe for adjudication, concluding that:

> "I cannot escape the conclusion that in a natural eagerness to elicit from this Court a decision at the earliest possible moment, each side was at least un-

> wittingly the ally of the other in bringing before this Court far-reaching questions of constitutionality under circumstances which all the best teachings of this Court admonish us not to entertain.
>
> "But since my brethren find that the case calls for adjudication, I join in the Court's opinion. I do so because of another rule of constitutional adjudication which requires us to give a statute an allowable construction that fairly avoids a constitutional issue."

Id. at 129.

Nine years later, in *United States* v. *International Union, supra,* the Supreme Court was, for the second time, asked to decide the constitutionality of §610. There, the Court was again faced with an appeal from a District Court's dismissal of an indictment charging union violation of §610. The District Court had held that the indictment did not charge an offense under the statute and, therefore, did not rule on the constitutional questions. A careful study of legislative history of §610 convinced the Court that the acts charged in the indictment were within the prescriptions of the statute.

The Court, per Justice Frankfurter, then faced the union's contention that:

> "* * * [I]f * * * [the statute] * * * embraces the activity alleged in the indictment, it offends several rights guaranteed by the Constitution."

Justice Frankfurter declined to answer this contention, responding:

> "* * * Once more we are confronted with the duty of being mindful of the conditions under which we may enter upon the delicate process of constitutional adjudication.
>
> "The impressive lesson of history confirms the wisdom of the repeated enunciation, the variously expressed admonition, of self-imposed inhibition against

passing on the validity of an Act of Congress 'unless absolutely necessary to a decision of the case.' Observance of this principle makes for the minimum tension within our democratic political system where 'scarcely any become, sooner or later, a subject of judicial debate.'

* * * * * * *

"Refusal to anticipate constitutional questions is peculiarly appropriate in the circumstances of this case. First of all, these questions come to us unilluminated by the consideration of a single judge—we are asked to decide them in the first instance. * * * *Finally by remanding the case for trial, it may well be that the Court will not be called upon to pass on the questions now raised.* * * *

"*Counsel are prone to shape litigation, so far as it is within their control, in order to secure comprehensive rulings.* This is true both of counsel for defendants and for the government. Such a desire on their part is not difficult to appreciate. *But the Court has its responsibility. Matter now buried under abstract constitutional issues may, by the elucidation of a trial, be brought to the surface, and in the outcome constitutional questions may disappear.*" (Citations omitted and emphasis added.)

Id. at 590-592.

In spite of the Supreme Court's obvious reluctance to decide the constitutionality of §610, as well as other legislative acts,[4] until absolutely necessary, our Court today rushes to do just that. My brother Matthes defends the action of the Court by arguing that the Courts of Appeals are rigidly bound to the literal wording of Rule 28(a)(2).

Rule 28(a)(2), which states in part that the brief of appellant shall contain "[a] statement of the issues presented for review," was primarily designed to clarify counsel's presentation of an appeal as well as to lighten

---

[4] See, *e.g.*, *Mackey* v. *Mendoza-Martinez*, 362 U.S. 384 (1960); *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U.S. 129 (1946).

the labors of the court. *Thys Company* v. *Anglo California National Bank*, 219 F.2d 131 (9th Cir.), *cert. denied*, 349 U.S. 946 (1955); *Iva Ikuko Toguri D'Aquino* v. *United States*, 192 F.2d 338 (9th Cir. 1951). It was not designed to permit counsel to manipulate this Court to their own interest or to prevent this Court from meeting its responsibility. See, *United States* v. *International Union*, *supra*; *United States* v. *C.I.O.*, *supra*.

I recognize, as Justice Black enunciated in *Clay* v. *Sun Insurance Office*, 363 U.S. 207 (1960), that avoidance of constitutional questions is discretionary and should be used only under the proper circumstances. I can conceive of no circumstances more appropriate than those in this case. The minority's decision would remand the case to the District Court for trial under appropriate and proper instructions. It is possible that under such instructions, our Court will not be called upon to judge this Congressional act.

The Supreme Court's Rule 23(1)(c)[5] is similar, in scope and purpose, to our Rule 28(a)(2). Yet the Supreme Court has not felt the need to religiously follow this general rule in the face of other important policy considerations.[6]

---

5 "*Rule 23. The petition for certiorari*

"1. The petition for writ of certiorari shall contain in the order here indicated—

* * * * * * *

"(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court."

6 This point is persuasively demonstrated by Chief Justice Warren's dissent in *Communist Party* v. *S.A.C. Board*, 367 U.S. 115, 119-121 (1961). The majority's failure to consider the issue urged there is not controlling in this case because of significant and material differences in the procedural postures of the two cases. At most, *Communist Party* was a case in which Justice Black's notion of using discretion in avoiding constitutional questions led to a result opposite of that here.

Nor have the appellate courts followed their own rule as strictly as Chief Judge Matthes would have us do. See, *e.g.*, *Platis* v. *United States*, 409 F.2d 1009 (10th Cir. 1969); *United States* v. *O'Connor*, 291 F.2d 520 (2nd Cir. 1961); *General Finance Loan Co.* v. *General Loan Co.*, 163 F.2d 709 (8th Cir. 1947).

Rule 28(a)(2) was intended to serve the Court, not to hamstring it. Long held notions of constitutional adjudication advise us to remand this case for a new trial with proper instructions. We should do so.

Judges Lay and Bright have authorized me to state that they join in this dissenting opinion, and I join in Judge Lay's dissent.

LAY, Circuit Judge, dissenting.

I would reverse the judgment below and remand for a new trial for the reasons set forth in Judge Heaney's dissenting opinion. I direct myself to the procedural question discussed in the concurring opinion.

First, I disagree with the majority that the trial court's instruction was not attacked as error by the defendants in their original briefs on appeal. Second, this court set aside the original submission of the appeal and directed anew the parties to file supplemental briefs for the benefit of the court en banc. The defendants specifically question the propriety of the instruction in their supplemental brief and the government did not raise the issue of abandonment or noncompliance with the Federal Rules of Appellate Procedure. Third, it is an equally "deeply entrenched principle" that in the public interest and to guard against manifest injustice this court will notice errors not properly raised for review, if such errors are obvious or otherwise seriously affect the fairness and integrity of the judicial proceeding.

There exists a fundamental discrepancy in the concurring opinion's restatement of the constitutional issues as raised by the defendants. The First Amendment issue is there stated to be:

> "Section 610 is unconstitutional because it abridged appellants' and all union members First Amendment rights."

However, the proposition stated in defendants' original brief is fashioned not as an abstraction but as a justiciable issue:

> "Section 610, Title 18, U.S.C., *as construed and applied by the Court below,* abridges the defendants' rights as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First Amendment of the Constitution of the United States." (My emphasis.)

The justiciable controversy is the application of § 610 *"as construed and applied by the Court below."* (My emphasis.) The district court's instruction to the jurors informed them the law of the case as it was actually tried. The district court instructed the jury; "[T]he mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money." The defendants' 98 page attack is explicitly *directed to this construction* of Section 610. To now urge that the district court's instruction is not raised as error by the defendants on appeal is to ignore the heart of the matter being litigated. Cf. *Terminiello* v. *Chicago,* 337 U.S. 1 (1949). It approaches appellate review in the celestial light of abstractness.

To follow the logic of the majority's theory of abandonment does more than to shackle the appellate process to whatever narrow remedy might be sought by a party. It

refuses as well any consideration of the broad congressional power given to this court under 28 U.S.C.A. § 2106,[1] and requires us to determine troublesome constitutional issues raised not by the congressional intent or enactment but by reason of the district court's narrow interpretation of the statute.

We should not pass upon the issue of the constitutionality of § 610 when it is not properly before us. The district court failed to instruct the jury that voluntary contributions to the fund are not within the scope of the statute. The statute does not and cannot proscribe use of voluntary funds. *United States* v. *Auto Workers,* 352 U.S. 567, 592 (1957); *United States* v. *C.I.O.,* 335 U.S. 106, 123 (1948). Not until the statute is given its intended construction should we weigh the constitutional issues presented. As the concurring opinion authoritatively concedes, constitutional validity of legislative action should not be passed upon until the conflict is unavoidable. See also *Thorpe* v. *Housing Authority,* 393 U.S. 268, 284 (1969); *Rosenberg* v. *Fleuti,* 374 U.S. 449, 451 (1963). As this writer observed in *In re Weitzman,* 426 F.2d 439, 454-55 (8 Cir. 1970), "the abandoning of a valid claim on appeal cannot dictate to the court when it must reach a constitutional issue." Thus, the majority, under the guise of allegiance to rules of procedure, admittedly setting aside well established principles of constitutional construction, must, because the parties so shaped the question, meet constitutional issues headon. As the concurring opinion concedes, this is simply not good policy, nor should it be.

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[1] Section 2106 reads:

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

The majority opinion upholds the constitutionality of § 610. It does so without reference to the facts of the case, since the basis of the opinion completely disregards the district court's narrow and erroneous construction of the statute. In doing so, it overlooks that the defendants were convicted under the erroneous, and in my judgment, unconstitutional, application of the statute as encompassing funds voluntarily paid by union members for political activity. The majority justify their decision because they say the instruction itself is not attacked on appeal. The defendants' original brief belies this statement. The instruction is expressly attacked and defendants' counsel repeatedly and specifically explain the basis of the attack.[2]

---

2 The instruction is set out on page 37 of defendants' brief. Defendants' brief argues:

"The Court also instructed that (A. p. 1116): 'the mere fact that the payments into the fund may have been *made voluntarily* by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money.'" p. 37.

"The Court below construed Section 610 as prohibiting officers, agents and members of a union from forming a parallel political organization and utilizing the union leaders, officers and agents in such political organization, in the obtaining, pooling and expending of direct voluntary contributions for political purposes." p. 59.

"The statute as construed denies individual rights of voluntary association for it forbids working men to associate and act through their labor leaders in the political field to protect their collective rights. This includes both their rights as union members and the rights of the union which they have joined. Even though the choice of candidates may determine whether those rights will be secured or destroyed, the statute as construed, prohibits union members from protecting and advancing those rights." p. 65.

". . . The Court instructed the jury that it could find that a separate voluntary political fund was in fact a union fund by any and all circumstances in evidence (A. pp. 1112-1115).

"This interpretation was made by the court despite the legislative history to the effect that a separate voluntary fund, such as the one here, is excluded from the criminal sanctions of Section 610 and without any judicial support or any prior prosecution (See Argument I, *supra*). Thus, as applied and interpreted by the lower court, Section 610 is unconstitutionally vague as it failed to give defendants fair warning of its scope and was a retroactive, unforeseeable judicial enlargement of the statute.

"Such a fortuitous judicial construction, analogous to legislative *ex post facto*, intensifies the vagueness of the statute and is even more

In essence, what the majority is saying is that although the district court's erroneous construction of the statute is raised on appeal, the defendants failed to ask for the right relief or remedy (a new trial), as a consequence of which the judgment must be affirmed. The federal rules governing procedure were never intended to punish a party for failure to seek the proper relief.[3] Decisions are replete holding that a court of appeals may shape the remedy regardless of the relief sought.[4] Section 2106 is

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so inimical to due process than if the statute is merely vague on its face." pp. 68-69.

"As such, the statute, as constructed by the district court, totally inhibits the fundamental freedoms of expression, assembly and petition guaranteed by the First Amendment (See Argument II, *supra*). Where a statute operates to restrain protected First Amendment freedoms, stricter standards of permissible statutory vagueness are to be applied," p. 72.

3 This application of the rules violates the spirit and letter of the rules themselves. Compare Rule 54(c) of Fed. R. Civ. P., which reads in part: "[E]very final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, *even if the party has not demanded such relief in his pleadings.*" (My emphasis.)

4 Compare *Turk* v. *United States*, 429 F.2d 1327 (8 Cir. 1970), an opinion in which Chief Judge Matthes joined, where because of insufficient evidence to justify an arrest and search we vacated a judgment of conviction, but remanded *sua sponte* for an evidentiary hearing on probable cause.

This court's recent remand in *Laclede Gas Co.* v. *NLRB*, 421 F.2d 610 (8 Cir. 1970), is viewed with jaundiced eye in the concurring opinion. It should be stated that a vigorous petition for a rehearing en banc was filed in that case. Not a single judge requested a vote for an en banc hearing and the petition was denied. Additionally unrecalled is the existence of compelling authority and reason for a court of appeals to remand to the National Labor Relations Board under such circumstances. See e.g., *Nuelsen* v. *Sorensen*, 293 F.2d 454, 462 (9 Cir. 1961), where the court said:

"Yet none of these theories were advanced in appellant's pleadings, stated as issues in the pre-trial order, presented in the trial court, or dealt with in the briefs on appeal. This court has refused to reverse on a ground not argued in the trial court. United States v. Waechter, 9 Cir., 195 F.2d 963.

"This accords with the general rule that an appellate court will not consider sua sponte arguments not presented or urged by the

authority and index to these decisions. See *Neely* v. *Eby Constr. Co.*, 386 U.S. 317 (1967).[5] FRAP is not concerned with *how* the issue is raised, but *what* is raised. To reason that a defendant is to be deprived of any relief from an erroneous conviction merely because he names the wrong remedy on appeal is reminiscent of the rigid and rationalized distinctions from the days of code pleading.[6]

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litigants. This restraint is essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial forum is to decide and in order that the litigants not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence. Hormel v. Helvering, 312 U.S. 552, 556, 61 S.Ct. 719, 85 L.Ed. 1037.

"There is, however, no rigid and undeviating judicially declared practice under which courts of review, invariably and under all circumstances decline to consider all questions which have not previously been specifically urged. Indeed there could not be without doing violence to the statutes which give federal appellate courts the power to modify, reverse or remand decisions 'as may be just under the circumstances.' 28 U.S.C.A. § 2106. Exceptional cases or particular circumstances may prompt a reviewing court, where injustice might otherwise result or where public policy requires, to consider questions neither pressed nor passed upon below. The power to raise and decide questions sua sponte is, however, to be exercised sparingly and with full realization of the restrictions and limitations inherent in its employment.

"Rather than consider the matter sua sponte, of course, the appellate court may note the existence of the unargued, undecided question and remand the case to the lower court. This makes the decision on the matter one reflecting the consideration of a trial court and the counsel in the case.

"In our opinion justice requires that such a course be followed in this case." (My emphasis)

5 In *Neely* the court of appeals had granted a judgment n.o.v. Although a motion for new trial was not presented by the verdict-holder on appeal nor by a petition for rehearing, the Supreme Court stated that "It was, of course, *incumbent* on the Court of Appeals to consider the new trial question in the light of its own experience with the case. But we will not assume that the court ignored its duty in this respect, although *it would have been better had its opinion expressly dealt with the new trial question.*" 386 U.S. at 329-30. (My emphasis.)

6 This recalls to mind Maitland's aphorism that "the forms of action we have buried, but they still rule us from their graves." Maitland, The Forms of Action at Common Law 296 (1909).

Assuming *arguendo* merit to the majority's view in the context of the original briefs, I add an additional word of concern. On August 19, 1970, this court ordered the panel's original judgment to be vacated and to have the case resubmitted to the court en banc. The clerk of the court was then directed to notify the parties that they could submit supplemental briefs. On September 10, 1970, Mr. Tucker wrote the parties:

> "Reference is made to the Court's order of August 19, 1970, vacating our previous judgment and reinstating the case on our calendar. I am directed by the Court to inform counsel that this appeal is to be submitted to the Court en banc on Wednesday, October 14, 1970, at 9 a.m.
>
> "Counsel for appellants may have to and including September 22, 1970, in which to file any additional briefs thought appropriate and counsel for appellee, United States, may have to and including October 1, 1970, in which to file additional brief.
>
> "Any subsequent briefs may be in typewritten form on lettersize paper and fastened in the left margin. I will need an original and seven copies of typewritten briefs which should, of course, be served on opposing counsel."

On September 17, 1970, the defendants submitted a supplemental brief requesting in the alternative a new trial, for the reason that:

> "The Court below erred in instructing the jury that it could find the defendants guilty even if it believed all of the contributions to the Political Fund were voluntarily made."

On September 29, 1970, the government responded solely to that proposition. Ironically, it is not the government that first raises the question of violation of the Federal Rules of Appellate Procedure.

The concurring opinion construes the Federal Rules of Appellate Procedure as inflexibly barring this court's

consideration of the erroneous instruction. Assuming solely for the sake of argument that one could reasonably say that the defendants did not properly attack the court's construction of the statute on appeal, the concurring opinion overlooks another "deeply entrenched principle" followed by this circuit. Senior Judge Vogel, when Chief Judge of this court, said in *Harris* v. *Smith*, 372 F.2d 806, 815 (8 Cir. 1967), "An additional ground of error, *although not urged on appeal*, should be noticed by this court because of its substantial effect upon the rights of the parties." (My emphasis.) Judge Vogel quoted from *General Finance Loan Co.* v. *General Loan Co.*, 163 F.2d 709, 711 (8 Cir. 1947), where the late Judge Thomas observed:

> "'We may, however, in our discretion consider a plain error apparent on the face of the record for the purpose of avoiding a manifest miscarriage of justice, or where the issue raised is one of public concern, even in a civil case. Kincade v. Mikles, 8 Cir., 144 F.2d 784; National Aluminate Corporation v. Permutit Co., 8 Cir., 144 F.2d 93.'"

And we said in *Lewis* v. *United States*, 340 F.2d 678, 683 (8 Cir. 1965), "'it (is) our duty to correct clear error' where shown to exist." See also *Harris* v. *United States*, 297 F.2d 491, 492 (8 Cir. 1961); *Page* v. *United States*, 282 F.2d 807, 810 (8 Cir. 1960); *United States* v. *353 Cases, Etc.*, 247 F.2d 473, 477 (8 Cir. 1957); *Cave* v. *United States*, 159 F.2d 464, 469 (8 Cir. 1947), cert. denied 331 U.S. 847, rehearing denied 332 U.S. 786. The concurring opinion's inflexible approach to appellate review is contrary to the view taken not only by this circuit, but by all other courts of appeals. In *United States* v. *Achilli*, 234 F.2d 797, 809 (7 Cir. 1956), aff'd 353 U.S. 373 (1957), the court said: "Rule 52(b) was designed to reach errors of such a substantial nature that they would, if not corrected, result in a manifest miscarriage of justice. [citing authority.] Inasmuch as errors within the comprehension of the provisions of this rule are those of such a nature

that they must be corrected to prevent a manifest injustice, it is incumbent upon a reviewing court to notice such error *sua sponte* although the issue presented *is not raised on appeal.*" (My emphasis.) In *Forakis* v. *United States,* 137 F.2d 581, 582 (10 Cir. 1943), the Court of Appeals for the Tenth Circuit observed: "That general rule [errors not preserved are not reviewable on appeal] bears the well recognized exception that where life or liberty is involved, an appellate court may notice and correct serious errors which were fatal to the rights of the accused even though they were not challenged or reserved." In *Gros* v. *United States,* 136 F.2d 878, 880-81 (9 Cir. 1943), reversed on rehearing 138 F.2d 260, the principle is similarly expressed: "It is obvious that it is immaterial in a court of justice whether the court sua sponte first recognizes and calls attention to a plain error 'absolutely vital to defendants' and that appellant's counsel then urges it, or that counsel first calls the appellate court's attention to the vital error." See also *Fisher* v. *United States,* 328 U.S. 463, 467-68 (1946); *Screws* v. *United States,* 325 U.S. 91, 107 (1945); *Reisman* v. *United States,* 409 F.2d 789, 791 (9 Cir. 1969); *McMillan* v. *New Jersey,* 408 F.2d 1375, 1377 n. 7 (3 Cir. 1969); *Garza-Fuentes* v. *United States,* 400 F.2d 219, 223 (5 Cir. 1968), cert. denied 394 U.S. 963 (1969); *Stephan* v. *United States,* 133 F.2d 87, 89-90 (6 Cir. 1943), cert. denied 318 U.S. 781 (1943).

I cannot judicially accept the reasoning that manifest injustice may take place in a criminal trial and yet lay beyond the reach of appellate review because a lawyer inadvertently failed to protect the defendant's rights in an appellate brief. There should exist no talismanic phrases to excite an appellate judge to recognize a miscarriage of justice in a criminal appeal. For an appeals judge to take effective action in these circumstances, even where counsel fails to properly preserve the error, is not advocacy, but rather an urgent and necessary exercise

of judicial responsibility. If this be proscribed as advocacy, the breadth and meaning of judicial review would have been rendered meaningless long ago. See generally Cardozo, The Growth of the Law (1924).[7]

As the Supreme Court has observed:

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." *Hormel* v. *Helvering*, 312 U.S. 552, 557 (1941).[8]

I am authorized to say that Judge Heaney and Judge Bright concur in this opinion.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

---

7 In this work Mr. Justice Cardozo, while on the New York Court of Appeals, observed:

"Every decision, where the judicial process is creative, and not merely static or declaratory, is a reflection of the problem and an expression of the answer. The philosophy may be inconsistent or unsound or distorted. The answers will share the vice, and be perverse or unwise or contradictory. The problem is always present. We shall not find the solution by acting as if there were nothing to be solved." At 21.

8 Mr. Justice Cardozo also reflected:

"The passing years have not brought to me the gift of wisdom, but they have at least opened my eyes to the perception that distinctions which in those early days seemed sharp and obvious are in truth shadowy and blurred, the walls of the compartments in no wise water-tight or rigid." Cardozo, supra n. 7 at 36.

APPENDIX C

JUDGMENT

United States Court of Appeals
For the Eighth Circuit

No. 19,466—September Term, 1970

United States of America,
Appellee,
v.
Pipefitters Local Union No. 562, St. Louis, Missouri, Affiliated With the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, Lawrence L. Callanan, John L. Lawler and George Seaton,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgments and sentences of the said District Court appealed from in this cause be, and the same are each hereby, affirmed in accordance with the majority opinion of this Court this day filed herein.

And it is further ordered by this Court that the defendants in the said District Court, Lawrence L. Callanan, John L. Lawler and George Seaton, do surrender themselves to the custody of the United States Marshal for the Eastern District of Missouri, if not now in custody, in execution of the judgments and sentences imposed upon them, within thirty days from and after date of filing of the mandate of this Court in the District Court.

November 25, 1970

APPENDIX D

United States Court of Appeals
For the Eighth Circuit

No. 19,466—September Term, 1970

United States of America,
Appellee,
vs.
Pipefitters Local Union No. 562, et al.,
Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

Petition of appellants for rehearing of the judgment of November 24, 1970, of the Court en banc, having been considered, it is now here ordered that the same be, and it is hereby, denied.

December 17, 1970

APPENDIX E

The following is the Statement of the Issues Presented for Review as they were contained in Petitioners' original brief in the Court of Appeals.

I

Whether the indictment alleged an offense and whether the evidence was sufficient to sustain a conviction for conspiracy to violate Section 610, Title 18, United States Code, where both showed that the funds expended for political purposes were not funds of the union, and were never commingled with the union funds, but instead were funds of a political organization which received its funds from direct voluntary contributions from individual members of the union and other individual pipefitters who worked under the jurisdiction of the Union.

II

Whether Section 610, Title 18, United States Code, **as construed and applied by the Court below**, abridges the defendants' rights, as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First Amendment of the Constitution of the United States.

III

Whether 18 United States Code, Section 610 **as construed and applied by the Court below** and on its face, is so vague, indefinite and uncertain as to deprive defendants of due process of law and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments?

IV

Whether 18 United States Code, Section 610 is an unjustifiable arbitrary discrimination which deprives unions, its members, and persons of the laboring class of liberty and property without due process of law in violation of the Fifth Amendment?[1]

V

Whether Section 610, Title 18, United States Code, as **construed and applied by the Court below**, and on its face, unlawfully abridges the rights of defendants and all union members to vote and to choose their Senators and Representatives in Congress, as guaranteed by Article I, Section 2, and the Seventeenth Amendment to the Constitution of the United States.

VI

Whether the jury by making a special finding in its verdict "that a willful violation of Section 610 of Title 18, United States Code was not contemplated," found an essential element of any conspiracy under 18 U. S. C. Section 371 to violate a substantive statute which is malum prohibitum, lacking and thereby acquitted the defendants?

---

1 **Excerpts From Argument IV in Appellants' Original Brief**

"Section 610, as construed by the district court, is such an unjustifiable discrimination as to violate the due process clause of the Fifth Amendment. Under the court's interpretation persons of the laboring class are practically prohibited from political action in any form, whereas those opposed to labor are given free rein to influence elections." (App. Br., pp. 77-78.)

* * *

"Defendants submit therefore, that the discrimination they sustain by Section 610's inherent inequality, particularly in view of the lower court's unwarranted judicial enlargement thereof, makes these statutes so unjustifiable within the meaning of **Bolling v. Sharpe**, *supra*, as to constitute an abridgment of the due process clause of the Fifth Amendment." (App. Br., p. 83.)

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70-74

No. 1288

In the Supreme Court of the United States

OCTOBER TERM, 1970

PIPEFITTERS LOCAL UNION NO. 562, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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WILL WILSON,
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421-038—71——1

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1289

PIPEFITTERS LOCAL UNION NO. 562, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the original panel of the court of appeals (Pet. App. A) is reported at 434 F. 2d 1116. The opinion of the court of appeals *en banc* (Pet App. B) is reported at 434 F. 2d 1127.

JURISDICTION

The original decision of the court of appeals was entered on June 8, 1970. A motion for rehearing *en banc* was granted and the judgment *en banc* (Pet. App. C) was entered on November 24, 1970. A petition for rehearing of the *en banc* decision was denied on December 17, 1970 (Pet. App. D). Mr. Justice

White extended the time for filing a petition for a writ of certiorari to February 1, 1971, and the petition was filed on January 29, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 610, as construed and applied by the courts below and on its face, abridges petitioners' rights under Article I, Section 2, of the Constitution, or under the First, Fifth, Sixth, or Seventeenth Amendments.

2. Whether the indictment alleged an offense.

3. Whether the facts support petitioners' convictions of conspiring to violate 18 U.S.C. 610.

4. Whether a special jury verdict that "a willful violation of [18 U.S.C. 610] was not contemplated" entitled petitioners to an acquittal.

5. Whether certain of the trial court's jury instructions were erroneous.

STATUTE INVOLVED

In pertinent part, 18 U.S.C. 610 provides:

> It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organizations of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

STATEMENT

After a lengthy jury trial in the United States District Court for the Eastern District of Missouri, petitioners [1] were convicted on September 19, 1968, of

[1] The indictment charged Pipefitters Local Union No. 562 ("Local 562"), a labor organization affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, as well as three individuals (Lawrence L. Callahan, John L. Lawler, and George Seaton), who were its officers (A. 12–13). All are petitioners here. "A." references are to the appendix in the court of appeals.

conspiracy to violate 18 U.S.C. 610, which proscribes, *inter alia,* any contribution by a labor organization "in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative * * * are to be voted for * * *." Local 562 was fined $5,000 and Callanan, Lawler, and Seaton were each sentenced to one year's imprisonment and fined $1,000. On appeal, a divided panel of the Court of Appeals for the Eighth Circuit affirmed. That court reheard the case *en banc,* and again affirmed petitioners' convictions in a split decision (4 to 3).

1. *The indictment.* In essence, the indictment charged that from 1963 until its return on May 9, 1968, petitioners conspired to violate 18 U.S.C. 610, by having Local 562 make political contributions in connection with certain federal elections (A. 12–25). As a part of the conspiracy, it charged, petitioners established and maintained a special political fund known as the "Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund" (the "Fund") (A. 14). The Fund was designed to appear wholly independent and separate from Local 562, but in fact it was simply an arm of Local 562, part and parcel of the union itself and intended to conceal that in truth Local 562 was making the political contributions in question (*id.*).

The Fund was financed by collections from members of Local 562, as well as non-members working within its jurisdiction (A. 15). Members of Local 562 who were supervisors were agents for the Fund at job sites and at the union's St. Louis headquarters;

they distributed Fund contribution agreement cards and maintained contribution records on the pipefitters working within the union's area (A. 15–16). By these means, the indictment charged, petitioners conspired to make substantial prohibited contributions in connection with the 1964 and 1966 election campaigns, with Callanan and Lawler issuing Fund checks to candidates for some $150,000 (A. 16).

2. *The evidence.* Local 562 exercises jurisdiction over all major jobs in more than half of the state of Missouri (A. 976). Although there are three other Pipefitters locals within this same territory, contractors on major jobs must seek their pipefitters from Local 562 (A. 976–980). Local 562 gives priority on these jobs to its own members, and then to the members of the other locals. The members of the other locals regularly work on jobs under the jurisdiction of Local 562, since, as a result of its limited membership policy, Local 562 cannot supply from its members all the workers needed (A. 1059). On such jobs the members of the other locals receive a higher wage rate than on work performed under the jurisdiction of their own locals (A. 750, 757).

The government's evidence showed that contributions to the Fund in fact were "assessed" by Local 562 (A. 163–165, 170, 179, 187, 218–219, 227–228, 232, 289–290, 293, 297, 320, 431–432, 456–457, 531, 533, 644); were part of the union's dues structure, in that the total amount of dues and Fund "contributions" collected by the union from both members and non-members was a fixed, predetermined sum (A. 487–

500, 745, 754, 985, 1001; E. 532–534 [2]); were collected from non-members in lieu of union dues to Local 562, in amounts identical to the aggregate of the dues and Fund contributions paid by members (A. 470–478, 1010–1014, 1042; E. 465–466); were considered an integral part of the union's financial resources and expended for union purposes (A. 673–678, 683, 729–730, 787–788, 802, 814–819, 1018–1019, 1035–1036, 1077; E. 395, 493–494); and were diverted to a "gift fund" for petitioner Callanan, the "contributions" to which were made in the same manner as, and temporarily in place of, contributions to the Fund (A. 117–128, 221, 771; E. 180–285). The Fund had no constitution or by-laws, no minutes of meetings, no membership roll, and no recording secretary (A. 1018–1019). Its books were not audited, and it made no accounting for its expenditures (A. 103, 1077). The union's officers controlled every aspect of the Fund, and it was no more independent of Local 562 than any of its other subdivisions.

As a result of these efforts, the Fund was highly successful. During the period 1963–1966, its contributors donated to it in excess of $1,230,000 (A. 131; E. 1). In the same period, it disbursed over $151,000 in connection with the election campaigns of various federal candidates (A. 132; E. 2). Because of the Fund's performance on this score, Local 562 and its officers became well known in the nation's highest political circles and were highly in-

[2] "E." references are to volume three of the appendix, which contains the trial exhibits.

fluential with the national affiliate (E. 380–382, 417, 418, 452–543). The union and its leaders were given full credit for the political activities of the Fund, in recognition of the fact that it was inextricably a part of, indeed was indistinguishable from, the operations of the union itself.

3. *The jury instructions and verdict.* Petitioners sought to counter the government's evidence by introducing testimony that all contributions to the Fund were voluntarily made to it as an independent entity, and without regard to the union's obvious involvement in its operations. In petitioners' view, there could be no offense if in fact the contributions were voluntary, and they requested jury instructions to this effect (Pet. 7–9, 30–32). The trial judge rejected petitioners' argument, and instead adopted the government's theory, that Section 610 was violated if in fact the Fund was merely a subterfuge through which the union itself made proscribed political contributions, irrespective of whether the moneys so contributed were voluntarily given to the Fund by the contributors. The trial judge did, however, instruct the jury to consider the evidence that the payments were voluntary in determining if it was the union or the Fund as a separate entity that made the political contributions in question (A. 1112–1113, 1116).[3]

[3] The court's instructions on this subject were as follows (A. 1112–1114, 1116):

> You will note that Section 610 prohibits contributions by labor organizations for use in connection with an election for a federal office. It does not prohibit any per-

After admonishing that it could convict petitioners of the offense charged only if they "knowingly, willfully and purposely did an act which the law forbids" (A. 1110), the trial judge told the jury that he had prepared two verdict forms for their use and that they were to return their verdict on one of the two

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son from making or agreeing to make such contributions or setting up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization. That is, the statute is not violated unless the contribution is in fact and in the final analysis made by the labor organization.

In this case evidence was offered by the Government to the effect that funds were contributed to or on behalf of candidates for federal office and that such funds were paid out upon checks drawn upon the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund. It is necessary, therefore, that the evidence establish that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union. As to this issue, the defendants contend that the fund in question was a bona fide entity separate and apart from the union, established by the voluntary good faith act of members of the pipefitters Local 562 and others, from which contributions to condidates were made on behalf of the persons who created the fund and not on behalf of the union. On the other hand, the Government contends that the fund was a mere artifice or device set up by the defendants and others as a part of the alleged conspiracy to give the outward appearance of being an independent and separate entity but in fact constituting a part of union funds.

In determining whether the Pipefitters Voluntary Fund was a bona fide fund, separate and distinct from the union or a mere artifice or device, you should take into considera-

forms (A. 1119). The first form was to be used "to return a verdict of either guilty or not guilty of the offense charged;" the second form should be used "only in the event you find one or more of the defendants guilty of the willful conspiracy charged and further find that the conspiracy * * * did not contemplate a willful violation of Section 610" (*ibid.*). The jury returned its verdict on the second form, finding that petitioners each were guilty as charged but that "a willful violation of Section 610 of Title 18, United States Code, was not contemplated" (A. 1126). Petitioners made no objection to use of the two verdict forms or to the instructions concerning them.

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tion all the facts and circumstances in evidence, and in such consideration you may consider

* * * * *

10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

12. Whether or not the contributions to said fund were made voluntarily or involuntarily * * *.

* * * * *

A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money.

4. *The appeal.* Petitioners urged in the court of appeals that 18 U.S.C. 610, on its face and as applied by the trial court, was constitutionally defective under Article I, Section 2 of the Constitution and the First, Fifth, Sixth, and Seventeenth Amendments; that the indictment did not allege an offense; that insufficient evidence supported the jury's verdict; and that the jury's determination that a willful violation of 18 U.S.C. 610 was not contemplated required acquittal of conspiracy (Pet. 13–14). In their brief petitioners insisted that these matters required a reversal "without a new trial, and no request is made for a new trial," and limited the relief sought to "a reversal and discharge of the defendants" (see Pet. App. B, p. A 25; Pet. 14). The court affirmed in a divided decision, with the majority (Van Oosterhout and Blackmun, J.J.) explictly considering and rejecting each of the grounds urged by petitioners (Pet. App. A, pp. A 1–16). Judge Heaney, in dissent, objected to the trial court's instructions on the "voluntariness" issue, and concluded that this necessitated a new trial (Pet. App. A, pp. A 17–21).

The Court then granted petitioners' request for rehearing *en banc.* In a supplemental brief, petitioners adopted the reasoning of Judge Heaney's dissent and asserted that the erroneous instructions on "voluntariness" required a new trial. The *en banc* court affirmed petitioners' convictions *per curiam,* for "the reasons set out in the panel majority opinion * * *" (Pet. App. B, p. A. 23). In a separate opinion, the four judges making up the majority further expressed the view that petitioners, by their explicit presentation on the original appeal, "had deliberately

and consciously elected to abandon and waive any and all claims of prejudicial trial errors * * *" (Pet. App. B, p. A 25). Three dissenting judges urged reversal and a new trial for the reasons assigned in Judge Heaney's earlier opinion. Because they thought the statute does not preclude the use of funds voluntarily contributed by union members (see Pet. App. A–39), they found it unnecessary to consider the constitutional issue.

ARGUMENT

1. Petitioners level a variety of constitutional challenges to the validity of 18 U.S.C. 610, the underlying statute on which their conspiracy conviction was predicated (Pet. 17–27). All of these claims are premised on petitioners' assertion that the trial court "construed Section 610 as prohibiting officers, agents and members of a union from forming a parallel political organization and utilizing the union leaders, officers and agents in such political organization, in the obtaining, pooling and expending of direct voluntary contributions for political purposes," and that the statute as so construed prohibits "union members from voluntarily pooling their financial resources in political association, in an organization separate from the union, through their chosen leaders * * *" (Pet. 17, 19).

These arguments misconceive the basis of this case. The government's evidence established that Local 562 employed the Fund as an artifice to circumvent 18 U.S.C. 610, and that in truth union moneys, and not moneys from an independent organization, were used to make the political contributions in question. This

was the essential charge of the indictment and the theory on which the case was tried. Indeed, the trial court unequivocally admonished the jury that in order to convict petitioners it had to find as follows (A. 1112):

> It is necessary, therefore, that the evidence establish that the [Fund] was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union. * * *

Accordingly, in its constitutional aspect, this case does not involve political contributions by entities actually separate and apart from unions, as petitioners contend, but rather involves direct contributions by the union itself, the very sort of direct political activity which the present statute and its long line of predecessors sought to prohibit. Only a contribution or expenditure by a union is within the reach of 18 U.S.C. 610; the activities of a *bona fide* entity independent of the union are not covered. The government's case fully recognized this essential distinction, as did the careful instructions to the jury.

Moreover, although the district court properly instructed the jury that it need not find that the contributors to the Fund were strictly required to do so by the union, the evidence plainly established that the contributions were not voluntary in the sense of spontaneity. And the jury was properly instructed to consider this evidence among the various factors that would determine whether the Fund was in fact separate from the union. The government showed that the "contributions" to the Fund were universally referred to as "assessments" (A. 290, 293, 294, 318, 380,

425, 431, 441, 456). The foremen uniformly collected them once each week from all of the men in their charge (A. 121). At least two foremen were unable to distinguish between these and other assessments levied by the union (A. 297, 320). Each payment was noted in a book which the foremen turned in with the money to the union hall (A. 216). If a workman did not pay for one week, the foreman or steward would write "owe" in the book (A. 161, 256). If a workman had not paid the week before and hence paid doubly the following week, the foreman often wrote "back assessment" in the book to account for the greater amount (A. 293, 318, 425, 449). Several men testified that as far as they knew, everybody paid into the Fund (A. 164, 170, 187).[3a] Others stated that they thought such payments were necessary if one were to get work (A. 201, 212, 270, 402). Thus, although most workers may have willingly made their payments to the Fund, the evidence plainly showed strong institutional pressure by the union for them to do so, as well as an intimate union interconnection with the establishment and administration of the Fund. This case therefore does not involve a voluntary organization set up by the workers apart from the union.

a. Petitioners first contend (Pet. 19–21) that 18 U.S.C. 610 as here applied denied their First Amendment rights of political association and expression. But the very fact that the statute does not apply to

[3a] There were, however, exceptions. Apprentices never contributed (A. 181, 307, 454). Other men were exempted for hardship reasons (A. 183, 223, 620–621) and some because of jurisdictional disputes with other unions (A. 405, 406).

prevent formation of independent voluntary organizations to give public expression to union political sentiment points to its legitimate and narrow reach. Under the statute union members may freely form voluntary political organizations to make political contributions; the only proscription is against the union itself making such contributions. To be sure, even the general funds of the union may be used for a variety of political activities, so long as the union does not engage, as it did here, in active electioneering on behalf of particular federal candidates designed to reach the public at large. See *United States* v. *C.I.O.*, 335 U.S. 106; see also *United States* v. *Automobile Workers*, 352 U.S. 567, 588–589. By proscribing activity of this latter sort, Congress sought to achieve narrow, well-defined and highly important objectives—to reduce undue institutional influence by unions on federal elections, to preserve the purity of such elections against the use of aggregated wealth, and to protect union members holding political views contrary to the union's (see *United States* v. *C.I.O.*, *supra*, 335 U.S. at 115, 134–135; *United States* v. *Automobile Workers*, *supra*, 352 U.S. at 575).[*] Compare *Red Lion Broadcasting Co.* v. *Federal Com-*

[*] Petitioners cite numerous First Amendment cases to support their view, but none of these dealt with the precise issue involved here or undercuts our contentions as to the First Amendment validity of 18 U.S.C. 610. This Court twice avoided passing on the First Amendment validity of Section 610 (in the *C.I.O.* and the *Automobile Workers* cases), although the opinion in the latter case (see 352 U.S. at 575) suggests the argument for constitutionality which we make, and which the court below accepted, in the present case.

munications Commission, 395 U.S. 367; *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, 616–620.

b. Similarly without merit is petitioners' claim that the statute is impermissibly vague. This argument is again grounded on the erroneous notion that this case involves a "separate voluntary fund." Rather, the offense involved in this case was the making of direct political contributions by the union in the ordinary understanding of such terms. See *United States* v. *Petrillo*, 332 U.S. 1, 7–8.

c. Nor does the statute impose "an unjustifiable discrimination" against persons of the working class (Pet. 23) or impair their electoral rights (Pet. 25–26). Section 610 does not, as petitioners suggest, prohibit such persons from group political action. It merely proscribes such action when in fact it is undertaken by the union itself. Members of a union remain free to associate for political purposes through voluntary organizations of their choice, and to make contributions by means of such organizations to Federal candidates.

2. Petitioners contend (Pet. 27–29) that the indictment failed to state an offense because it did not allege that the moneys contributed came from dues or the general funds of Local 562, and that the evidence was insufficient to prove that the Fund was in fact a union operation or to show that petitioners conspired to violate Section 610. It was not necessary to allege in the indictment that the contributions in question were made from union dues or general funds. The gist of the government's case, which the indictment

plainly indicated, was that the Fund was merely a sham by which the union sought to hide the political activities in which it was directly engaged; as the indictment related, petitioners hoped "thereby [to] conceal the fact that Local 562 would make contributions and expenditures in connection with [federal] elections" (A. 14). Plainly the indictment stated an offense under Section 610.

Similarly, the evidence summarized in the Statement, *supra*, amply supports, as the court below held, the jury's finding that "the fund was not a bona fide separate and distinct entity but was in fact a device set up to circumvent the provisions of § 610 and that the fund constituted union money" (Pet. App. A, p. A 7).

3. The jury's special verdict "that a willful violation of Section 610 * * * was not contemplated" does not, as petitioners urge (Pet. 29–30), entitle them to an acquittal. Petitioners' argument is premised on the theory that in so finding the jury also found that the conspiracy was not willful. But this does not follow,[5] and ignores the context in which the jury

[5] Petitioners reason as follows (Pet. 30): in order to be guilty of violating a *malum prohibitum* statute like Section 610, it must be shown that the alleged conspirators knew that the object of the conspiracy was unlawful; the jury found precisely to the contrary in its special verdict, by determining that a willful violation of Section 610 was not contemplated; and therefore the jury acquitted them. But there is no need to pass upon this abstract legal argument in this case, since the trial judge made plain that willfulness was an essential element of the conspiracy charged and an entirely different consideration prompted use of the special verdict form. And this fact plainly distinguishes the present case from those cited by petitioners as being in direct conflict.

returned this finding, which accounts for why the jury did so and negates petitioners' contentions.

The trial judge repeatedly admonished the jury that it could convict petitioners only if it found that the conspiracy charged was willful—"done voluntarily and purposely and with the specific intent to do that which the law forbids" (A. 1110; see also A. 1109, 1111, 1117–1118). The additional inquiry as to whether the conspiracy, if found, contemplated a willful violation of Section 610 is explained by the fact that a substantive conviction under that statute could be either a felony or misdemeanor, depending on whether "the violation was willful" (18 U.S.C. 610, p. 3, *supra*). The jury instructions made clear that the conspiracy charged required that petitioners have intentionally engaged in the conspiratorial activity; the special verdict was necessary to determine if petitioners, having intentionally acted contrary to the law, aggravated the crime by willfully flouting the proscriptions of Section 610. All parties understood that this was the purpose of the instructions, and approved of them, as is shown by the fact that petitioners' counsel voiced "[n]o objection" to their use (A. 1095). In these circumstances there is no need for further review of this isue.[6]

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[6] Moreover, even if this instruction permitted the jury to be inconsistent in its verdict it hardly follows that this warrants reversal of the conspiracy convictions. On the contrary, this case would then not differ materially from cases in which courts have ruled that inconsistent verdicts do not require reversal of convictions. *E.g.*, *Dunn* v. *United States*, 284 U.S. 390; see *United States* v. *Dotterweich*, 320 U.S. 277, 279; *United States* v. *Carbone*, 378 F. 2d 420, 422–423 (C.A. 2), certiorari denied, 389 U.S. 914.

4. Petitioners' objections to the instructions on the "voluntariness" issue (Pet. 30–33) were not raised on the original appeal. The rehearing majority considered that in the circumstances of this case any conceivable error on this score had been deliberately and consciously abandoned by petitioners, and thus upheld the earlier affirmance without discussing the merits of this claim. In any event, the argument is without merit and does not warrant further review.

Whether the payments to the Fund were voluntary was in fact an important issue in the trial. The trial judge instructed the jury (see n. 3, p. 7, *supra*) to consider this, along with the other evidence, in determining if the Fund, and the political contributions made from it, were in reality a union fund and union contributions. He added that the mere fact that some or even all of the payments to the Fund were voluntary would not, of itself, preclude the jury from making the crucial ultimate finding that the Fund was in truth a union operation. This instruction was entirely correct under our view of Section 610.

In essence, petitioners' claim reiterates their basic assertion, that Section 610 cannot constitutionally proscribe political activities on the part of the union where such activities are undertaken with the consent of the participants and contributions are not strictly coerced. However, the statute, and the legislative purposes to be served thereby, unmistakably prohibit direct political contributions by unions, even of funds thus "voluntarily" obtained. And as we argue above (pp. 11–14, *supra*) the narrow limitation thus im-

posed on the constitutional rights of petitioners and others similarly situated does not render Section 610 invalid.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari be denied.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, et al.,
Petitioners,

vs.

UNITED STATES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, et al.,
Petitioners,

vs.

UNITED STATES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR PETITIONERS

OPINIONS BELOW

The majority and dissenting opinions of the panel of the Eighth Circuit Court of Appeals are reported at 434 F.2d 1116 and are printed in the Appendix at pp. 1128-49. The majority and dissenting opinions of the Court of Appeals sitting *en banc* are reported at 434 F.2d 1127 and are printed in the Appendix at pp. 1153-59, 1159-78.

JURISDICTION

The judgment of the Court of Appeals on rehearing *en banc* was entered on November 24, 1970. A timely petition for rehearing was denied on December 17, 1970. On January 6, 1971 Mr. Justice White extended the time for filing of the petition for writ of certiorari to February 1, 1971. The petition for writ of certiorari was filed on January 29, 1971, and was granted on May 24, 1971 (91 S.Ct. 2168). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Courts below improperly construed Section 610, Title 18, U. S. C. in holding that the indictment alleged an offense and the evidence was sufficient to sustain a conviction for conspiracy to violate Section 610, Title 18, United States Code, where both showed that the funds expended for political purposes were not funds of the union and were never commingled with the union funds, but instead were funds of a political organization which received its funds from direct voluntary contributions from individual members of the union and other individual pipefitters who worked under the jurisdiction of the union?

2. Whether the District Court prejudicially erred in instructing the jury that it could find the defendants guilty even if it believed that all of the contributions to the separate Voluntary Fund were voluntarily made.

3. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face, abridges the petitioners' rights, as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First Amendment of the Constitution of the United States?

4. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face, is so vague, indefinite and uncertain as to deprive petitioners of due process of law and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments of the Constitution of the United States?

5. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face is an unjustifiable arbitrary discrimination which deprives unions, its members and persons of the laboring class of liberty and property without due process of law in violation of the Fifth Amendment?

6. Whether Section 610, Title 18, United States Code, as construed and applied by the Courts below and on its face, unlawfully abridges the rights of petitioners and all union members to vote and choose their Senators and Representatives in Congress, as guaranteed by Article I, Section 2, and the Seventeenth Amendment to the Constitution of the United States?

7. Whether the jury by making a special finding in its verdict "that a willful violation of Section 610 of Title 18 United States Code was not contemplated" found lacking an essential element of any conspiracy under Section 371, Title 18, United States Code to violate a substantive statute which is malum prohibitum, and thereby acquitted the petitioners?

8. Whether the Court of Appeals *en banc* below erred in refusing to rule on the question as to whether the instructions of the District Court were incorrect.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 610, Title 18, U. S. C., provides as follows:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential or Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

"For the purpose of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Section 371, Title 18, U. S. C., provides as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Section 2106, Title 28, U. S. C., provides as follows:

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances. June 25, 1948, c. 646, 62 Stat. 963."

First Amendment, Constitution of the United States provides in pertinent part:

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fifth Amendment, Constitution of the United States, provides in pertinent part:

"No person shall be . . . deprived of life, liberty, or property, without due process of law;"

Sixth Amendment, Constitution of the United States provides in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation;"

Seventeenth Amendment, Constitution of the United States provides in pertinent part:

"The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

Article I, Section 2, Constitution of the United States, provides in pertinent part:

"The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

STATEMENT

A. Indictment. Petitioners, Pipefitters Local 562 and three of its officers* were convicted by a jury verdict on a one-count indictment which charged them with having conspired from in or about 1963 to the date of the indictment, May 9, 1968, to violate Section 610, Title 18 U.S.C., by conspiring to have Pipefitters Local 562 make contributions and expenditures in elections for Federal Office (Tr. 2061; A. 1106).[1] The indictment detailed the alleged conspiracy in 18 paragraphs and 61 overt acts (A. 17-25). In doing so, it charged that petitioners "would establish and maintain a special fund entitled 'Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund,' which fund would have the appearance of being a wholly independent entity, separate and apart from Local 562 * * *" (Tr. 2061-62; A. 1106); that petitioners "in order to facilitate an orderly, regular and systematic collection of contributions to the Fund, would cause the agents of the Fund [who were foremen, stewarts, officers, members and employees of Local 562] to distribute to the pipefitters working at all job sites contribution agreement cards to be signed by such pipefitters," and that such agents of the Fund, "would advise newly employed pipefitters at such job sites of the existence of the Fund and of the rates of participation," (Tr. 2063-64; A. 1107); that petitioner "by means of the creation and operation of the Fund would continue in new form the practice of collecting for political purposes One Dollar

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* Petitioner Callanan died while the petition for a Writ of Certiorari was pending.

[1] The jury also made a special finding "that a willful violation of Section 610, of Title 18, United States Code was not contemplated." (Tr. 2083; A. 1126). Each of the individual defendants was sentenced to imprisonment for a term of one year and to pay a fine of $1,000.00 and the union defendant to pay a fine of $5,000.00 (Tr. 2093).

($1.00) per day worked from members of defendant Local 562 and, Two Dollars ($2.00) per day worked from non-member pipefitters employed on jobs within the jurisdiction of defendant local 562." (Tr. 2062-63; A. 1107);[2] that such agents collected such contributions on such regular systematic basis on the job sites and at the headquarters of Local 562 (Tr. 2060, 2063-64; A. 1105, 1107-08); that petitioners made contributions and expenditures to Federal candidates in the 1964 and 1966 elections **by checks on said Fund** in the approximate amount of $150,000 (Tr. 2064; A. 1108).

The indictment then alleged that said Fund was in fact a Fund of Local 562 (Tr. 2060; A. 1105, 1107-08), and that it was established and maintained for the purpose of concealing the fact that Local 562 was making political contributions (Tr. 2061-62; A. 1106). The indictment did **not** contain an allegation that any of the contributions to said **Fund were involuntary** or that the pipefitters making such contributions were unaware that the contributions would be expended for political expenditures and contributions. Of course, the indictment did not allege that any of the Local's own funds or member's dues were involved, or commingled with the monies of the Political Fund.

The 61 overt act dealt specifically with the Fund, consisting mostly of deposits and withdrawals from the Fund's bank accounts.

B. **Pre-Trial Motions.** Petitioners' Motion to Dismiss contained, *inter alia*, the following paragraphs (A. 27-8): requested (A. 30):

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[2] The Fund had first been established in 1949, shortly after the enactment of Section 610 (Tr. 1767, 1786; A. 972, 984) and continuously maintained thereafter. Certain revisions were made in it in late 1962 and early 1963, which we shall relate, *infra*, pp. 16-23.

"9. Although Paragraph 7 of the indictment alleges that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was a Fund of Local 562, it does not allege that the contributions or payments made to said Fund were not wholly voluntary nor that the pipefitters who contributed to said Fund did not do so voluntarily and were not fully aware that the money so contributed would be used for political contributions and expenditures and the other non-union purposes of said Fund. Nowhere in the indictment does the indictment allege that any of the contributions to said Fund were involuntary or that the pipefitters making such contributions were unaware that the contributions would be expended for political expenditures and contributions.

"10. The indictment fails to allege that the contributions and payments to the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund were involuntary or that they were dues, or that the payments to said Fund were necessary for membership in Local 562, or, as to non-member pipefitters employed on jobs within the jurisdiction of Local 562, required and necessary in order for said pipefitters to be so employed.

"11. The gist of the indictment is to allege that Section 610, **United States Code**, prohibits labor unions from forming parallel political organizations which receive voluntary contributions from the members of the union to be contributed and expended in Federal elections. Congress intended such political organizations to be legally authorized. Thus, the indictment fails to state an offense; and as so construed and applied, violates the provisions of the United States Constitution as set forth herein above.

"12. The allegations of the indictment, on its face, show no violation of the law, in that such allegations

affirmatively show that the expenditures and contributions were made by the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund; that said Voluntary Fund was a political organization which raised its funds by direct contribution from individual members of Local 562 and by direct contributions from individual members of other locals, and did not receive, contribute, or expend any funds of Local 562, or any other labor union."

In their motion for a Bill of Particulars, petitioners' requested (A. 30):

"2. With respect to paragraphs 7, 10 and 17 of the indictment, state whether it is the government's position and theory of the case that the mere fact that the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund was established, maintained, and administered by members, officers, employees, agents, foremen and shop stewards of Local 562 is, in and of itself, sufficient to make said Fund, under the law, a Fund of Local 562. State whether or not it is the government's position that Section 610, Title 18, U. S. Code, prohibits the members, officers, employees, agents, foremen and shop stewards of a union from establishing any political organization or fund for the purpose of making contributions and expenditures in connection with elections at which presidential and vice-presidential electors or United States Senators and Representatives to Congress are to be voted for. With further respect to said paragraphs of the indictment, state whether it is the government's position and theory of the case that the alleged 'regular and systematic collection, receipt, and expenditures of money obtained from working members of Local 562 and from working members of other labor organizations employed under jurisdiction of the defendant Local 562' were voluntary or involuntary collections and contributions."

The motions were thoroughly briefed for the District Court. See Joint Memorandum of Defendants in Support of Their Motions to Dismiss, wherein petitioners presented to the District Court in detail the interpretation of Section 610, and the constitutional issues, that are advanced in this Brief (A. 34-53).

In the Government's Memorandum in opposition to Petitioners' Motion to Dismiss, the Government stated (A. 56):

> "Proof of the offense charged here does not depend upon whether the funds were volunteered or not by union members."

On hearings on these motions, the Government asserted orally that it was their position that voluntariness of the contributions to the Political Fund was not essential for the offense Motion (Tr. 35-6, 40). All motions were overruled (A. 3-4) by the District Court without opinion.

C. **Government's Theory at the Trial.** We believe the Court can better comprehend the course of the trial and evidence as navigated by the Government by first relating the manner in which the Government asked the District Court to submit the case to the jury, which was modified only as stated in footnote 3, *infra*, by the District Court. The Government asked the Court to charge, which it did over objection (Tr. 1955; A. 1092), that the jury must find that the Voluntary Fund was in fact a fund of the Local (Tr. 2070; A. 1112-13). The Government's requested instruction then continued as follows (Tr. 2070-3; 1955-6; A. 1113-15, 1092):

> "In determining whether the Pipefitters Voluntary Fund was a bona fide fund, separate and distinct from the union or a mere artifice or device, you should take into consideration all the facts and cir-

cumstances in evidence, and in such consideration you may consider

"1. Whether or not payments to the fund were routinely made at regular intervals at job sites,

"2. Whether or not payments to the fund were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union,

"3. Whether or not the payment to the fund was determined by a formula based upon the amount of hours or overtime hours worked upon a job under the supervision of the union,

"4. Whether or not payments to the fund were at one rate for 562 members and at a different rate for members of other unions,

"5. Whether or not payments to the fund began, continued and terminated with employment on a job under the jurisdiction of the union,

"6. Whether or not monies of the fund were used to provide benefits to union members in their capacity as members,

"7. Whether or not payments to the fund by members of other unions were in lieu of payments to the union in the form of travel card dues in the amount of eight dollars per month,

"8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union pursuant to Section 2.05 of its Constitution and by-laws,

"9. Whether or not payments to the fund were made by those affiliated with the union to the general exclusion of other classes of persons or organizations,

"10. Whether or not expenditures from the fund were under the control of the union and its officers,

"11. Whether or not records used in the collection of payments to the fund are similar to those employed from time to time by the union in the collection of its regular dues and assessments."[3]

The Government then requested, and the Court instructed over petitioners' objection (Tr. 1956-7, 2075; A. 1093, 1116), that:

"A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether

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[3] This instruction, though still objected to by petitioners, was modified by the Court at the petitioners' request by adding the following paragraphs between 9 and 10 of the Government's request (Tr. 1955-6; A. 1092):

"10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

"11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

"12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

"13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

"14. Whether or not some persons who worked under the jurisdiction of Local 562 did not contribute to said fund,

"15. Whether or not the monies of said fund were used in part to promote activities which were prohibited to Local 562 by its Constitution and By-Laws,

"16. Whether or not said fund was established and maintained pursuant to the advice of counsel,

"17. Whether or not the monies of said fund were reported to the Department of Labor on the LM-2 forms, which required the reporting of monies of Local 562."

the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

Further, though Government's Counsel labored hard during the trial to elicit bits of evidence which might infer that some pipefitters may have paid into the Fund involuntarily, throughout the trial the Government cautiously proceeded on the theory that involuntariness of the payments to the Political Fund was of little, or no, moment; and certainly not essential to the offense (See, e.g., Tr. 1242-3; A. 629).

We now undertake to summarize the evidence adduced at the trial.

D. **Creation and Maintenance of Political Fund in Years Prior to the Period Alleged in Indictment.** As we have noted, the indictment alleged that the conspiracy began in or about 1963. The Local 562 Political Fund was actually created in 1949, and maintained continuously thereafter (Tr. 1767, 1786; A. 972, 984). The Government apparently picked the date contained in the indictment as a starting point because of certain events and changes which occurred in late 1962 and early 1963, where the name of the Fund was changed from "Voluntary Political, Educational and Legislative Fund" (usually just referred to as the Political fund), to "Voluntary Political, Educational, Legislative, Charity and Defense Fund" (Tr. 1767-1786; A. 971-84). From the beginning it was contributed to by Journeymen Construction Pipefitters who worked on jobs under the jurisdiction of Local 562, without regard to actual membership in the Local (Tr. 1787-8, 1937-8; A. 985, 1086).

In 1949 all Journeymen Construction Pipefitters who worked on jobs under the jurisdiction of Local 562,

whether members of Local 562 or other locals,[4] were assessed working dues by Local 562 of twenty-five cents per eight hours working day. This working dues assessment of both members and non-members working on jobs under the jurisdiction of Local 562 was continued until the end of the year 1962, by which time it had been increased to fifty cents per eight hours working day (Tr. 1787-1835; A. 984-1018). Throughout this period, Local 562 did not have a contract for check-off of working dues assessments by the contractor-employers, and the assessments were collected directly from the union members. Most frequently this was done by the union stewards on the job sites. Occasionally a foreman acted also as a steward on a temporary basis and made the collections, especially when only a few pipefitters were working on the job. Some members paid their assessments directly at Local 562's headquarters, either in person or by mail (Tr. 190-92, 342, 381-82, 628, 689, 947; A. 66-7, 154, 179, 289-90, 329, 451).

When the Political Fund was first established in 1949, separate contributions were also made by Journeyman Construction Pipefitters working on jobs under the jurisdiction of Local 562 to the Voluntary Political Fund. They too started in 1949 at twenty-five cents per eight hour working day, and by 1962 had been increased to fifty cents. In the recommended contributions to the Fund, no distinction was made (as with working dues

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[4] Local 562 which had territorial jurisdiction over about half of the State of Missouri, had joint territorial jurisdiction with small locals at Cape Girardeau in Southeast Missouri, and Hannibal, in Northeast Missouri. Local 562 had the big jobs and the rural locals the small jobs (Tr. 1771-79; A. 974-79). Many members of the two rural locals regularly worked on jobs under the jurisdiction of Local 562 in their area. The negotiated wage scale of Local 562 was much higher than that of the rural locals, especially in the area of the two rural locals, because Local 562's negotiated contract provided for higher wages by zones distant from their home location in St. Louis (Tr. 1819-32, 1856-58; A. 1007-16, 1032-33).

assessment for the Local) between members and non-members of Local 562. The contributions were collected in a manner similar to that of working dues assessments for the Local, that is, usually on the job by the job union steward (Tr. 1787-88, 1838-39; A. 985, 1020), although they were sometimes taken or sent directly by the worker to the Fund offices (Tr. 1787-88, 1838-39; A. 985, 1020).

Since the period from 1949 through 1962 was not alleged in the Indictment, the record does not contain any details of the operation and management of the Fund prior to the year 1963. However, it does appear that the monies of the Fund were always kept and maintained separate and apart from the funds of the Local (Tr. 721, 1001; A. 350); that they were disbursed by the Director of the Fund (Tr. 1839; A. 1020); and that from its inception in 1949 many of the pipefitters did not make contributions or payments into the Voluntary Political Fund (Tr. 1100, 1121, 1133, 1607; A. 541, 553-54, 561, 869). There is substantial evidence that Contributions to the Political Fund were always on a voluntary basis (Tr. 955-6, 501, 508, 642, 677, 714, 745, 899, 774, 996-7; A. 456-57, 256, 260, 299, 321, 345-46, 365, 422, 383-84, 482-83).[5]

E. **1962 Contract Negotiations.** In the fall of 1962, Pipefitters Local 562 was preparing to start negotiations for a new contract with the Mechanical Contractors Association (for most of the Construction Division of the Local), as their contract was expiring on June 14, 1963 (Tr. 1794-95; A. 990). For about 15 years, Local 562 had been represented by attorney Harry Craig, a prominent St. Louis

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[5] The testimony of 99 foremen, stewards, and members of Local 562 and non-members who worked under the jurisdiction of Local 562, with respect to contributions, collections, non-contributions and voluntariness of contributions or payments into said Fund, from its inception to the time of the trial is summarized hereinafter in Subsection H of this Statement, *infra* pp. 29-40.

labor attorney (Tr. 1788, 1874, 1885-87; A. 986, 1044, 1051-52).

One of the items which Local 562 negotiated in its new contract was checkoff of union dues and working assessments dues by the contractor employers. The officers of Local 562 frequently consulted with attorney Craig on this issue as well as many others (Tr. 1790-91, 1887-1890; A. 987, 1052-54). At this time petitioner Lawler was both Director of the Fund and Business Manager of Local 562. Petitioner Seaton was a business representative of the Local but held no position with the Fund. Petitioner Callanan did not then hold any office with either the Local or the Fund (Tr. 1789-90; A. 986). Lawler, Seaton and the president of Local 562, Mr. Steska (who was named in the indictment as a co-conspirator) also consulted with Attorney Craig as to the validity of checkoff of pledged contributions to the Voluntary Political Fund (Tr. 1791-93, 1796-97, 1890-91, 1899-1900; A. 987-89, 991, 1054-55, 1060-61).

Attorney Craig also represented Teamsters Local 688 (A. 1054-57), as well as many other Unions (Tr. 1885-86, 1890-92; A. 1051). In 1960, Teamsters Local 688 and other teamster locals and officers had been presented in the Eastern District of Missouri, the District below, for alleged violation of Section 610 wherein the District Court held that the procedure which they had followed did not violate Section 610. **United States v. Warehouse and Distribution Workers' Local 688 et al.**, 47 L.R.R.M. 2005 (E. D. Mo. 1960).

The Teamsters had used a form of checkoff for contributions to their political Fund by which the Locals had obtained signed cards from those workers who desired that a portion of his Local's dues be allotted to the political Fund. Only a portion of the dues of those who

signed the cards were so allotted to the political Fund, but a corresponding amount of the other members' dues was not refunded. The District Court still held this to be valid, on the ground that the political donations were voluntary. *Ibid.*

Attorney Craig at first advised petitioners to follow the Teamster plan. He also told them that checkoff of both the local's dues and working assessments dues and the men's pledged contributions to the Voluntary Political Fund was valid, following the Teamster procedure, for both members and non-members, provided voluntary pledge cards were first obtained from workers who desired that a portion of their dues go to the Political Fund (Tr. 1792-93, 1796-97, 1843-44, 1866-68, 1890-94; A. 988, 991, 1023-24, 1038-40, 1054-57). Accordingly, on November 21, 1962, the Executive Board of Local 562, passed a resolution for a recommendation to the membership to be made on November 24, 1962 (G. Exh. 105, Tr. 1796-97; A. 991). Here, so we understand the Government, was the beginning of the **alleged** conspiracy.

The recommendation was as follows:

> "Your Executive Board unanimously recommends that our Local Union members adopt a dues checkoff system for each journeyman and apprentice. That amount shall be 4 per cent assessment plus dues of each member's gross pay to be paid to the Secretary-Treasurer every week by the employer. Out of this the Secretary-Treasurer shall keep two and one-half per cent for the purpose of operating our Local Union. The Secretary-Treasurer shall turn over one and a half per cent of the 4 per cent to the business manager, who has charge of our Voluntary Political Educational and Legislative Fund. Under our present wage scale this should give the Secretary-Treasurer

ninety-two one-half cents a day per man and your Voluntary Political Educational and Legislative Fund fifty-five one-half cents a day per man. This will mean an increase of 48 cents a day for each member. This 4 per cent assessment plus dues to take effect as soon as the business manager can get our Contractors Association, and all others who hire our building trades journeymen and apprentices to agree to the checkoff system."

On November 25, 1962, attorney Craig changed his recommendation, not because he was afraid the Teamster procedure would violate Section 610, but for an entirely different and foreign reason. Further study of the then new Landrum-Griffin Act (73 Stat. 519), caused him to become fearful that, if Local 562 collected dues and assessments (or even travel card dues) (Tr. 1833, 1872-73, 1898-99; A. 1016, 1042-43, 1060-61), that is, any kind of dues from non-members, the Local would be required by the recently enacted Landrum-Griffin Act, as it combined with the already existing provisions of the Taft-Hartley Act, to accept such non-members into membership in the Local. This would have greatly jeopardized the job security of members of Local 562 (Tr. 1796-1801, 1853, 1858, 1869; A. 991-94, 1030, 1033, 1040-41). Consequently, lawyer Craig hastily recommended that the Local immediately stop accepting dues and assessments dues from non-members, without even waiting until the new contract was negotiated (Tr. 1846-47, 1869, 1895-99; A. 1025-26, 1040-41, 1057-61).

At the same time he also recommended that contributions to the Voluntary Political Fund not be collected by the checkoff; that Voluntary Pledge cards be obtained from contributors; and that, as before, the monies of the Voluntary Political Fund be kept separate and apart

from the funds of the Local (Tr. 1839-44, 1849, 1870, 1900; A. 1020-24, 1027, 1041, 1061).

Therefore on that very day, November 25, 1962, the Executive Board met again and, as reflected by the minutes (G. Exh. 105, Tr. 1799-1802; A. 993-95), petitioner Lawler "explained that on the advice of our lawyers for Local Union 562 * * * that in their opinion if the members of Local Union 562 voted and adopted a 4 per cent dues and assessment check-off system, and then took one and one-half per cent from the total 4 per cent for our Voluntary and Defense Fund, we would be in conflict with the Landrum-Griffin Law." Consequently it was recommended that at the next regular meeting, on December 12, 1962 the membership vote instead on a two and one-half per cent assessment plus $3.50 per month dues, to be negotiated for in the new contract: "All of this money shall remain in the Local Union's treasury for the purpose of operating the Local Union." Also, the Board decided that "Starting on the 1st of January, 1963, your Secretary will only collect from dues paying members of Local Union 562."

On December 12, 1962, the membership of Local 562 met. Attorney Craig and his partner, attorney Wiley, were present and directed the meeting. Numerous recommendations for the impending contract negotiations were favorably voted on, including the above. The Executive Board report of its meeting of November 25, 1962 was read and adopted. Defendant Lawler "read about the two and one-half per cent and $3.50 dues checkoff system and will do everything possible to have it enjoined in our new agreement." He "said we will vote tonight but it will not go into effect until it is accepted by the contractors" (Tr. 1803-1806; A. 996-98).

Written notices were also immediately sent to all Journeymen Construction Pipefitters who were working on jobs under the jurisdiction of Local 562 for a meeting of

Contributors to the Voluntary Political Fund to be held on the following Sunday, December 16, 1962 (D. Exh. MM).[6]

On the following Sunday, December 16, 1962, the contributors to the Voluntary Political Fund, both members and non-members of the Local, met, pursuant to such written notice. These contributors voted to recommend that members contribute $1.00 per day and non-members $1.50 per day to the Political Fund, thus increasing the contribution of members from fifty cents to $1.00 per day and non-members from 50 cents to $1.50 per day, all to begin January 1, 1963. Those present, both members and non-members were also told that the Local would no longer collect the 50 cents per day assessments dues from non-members (D. Exh. MM, Tr. 1808-10; A. 999-1001).[7]

Concurrent with these actions and recommendations, attorney Craig further recommended that, before accepting any more contributions to the Voluntary Fund, the Fund obtain a signed voluntary contribution pledge card, which attorney Craig designed (Tr. 1810-11, 1873, 1900-01; A. 1001, 1043, 1061-62). It reads as follows (D. Exh. A, Tr. 1815; A. 1004).

"VOLUNTARY CONTRIBUTION AGREEMENT

"I, the undersigned, of my own free will and accord, desire to make regular contributions to the Political, Education, Legislative, Charity and Defense Fund

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[6] "Dear Sir:

There will be a Meeting concerning POLITICAL ACTION SUNDAY, DECEMBER 16, 1962 at 3 P.M. at the ELECTRICIAN'S HALL—5850 Elizabeth Ave. Take notice of new location. Refreshments will be served. VERY IMPORTANT . . . Please be present. George Seaton, John L. Lawler".

[7] Meetings of the Voluntary Political Fund were usually held on Sunday, with political candidates present and refreshments served (Tr. 370, 398, 679, 719, 1806-13; A. 172, 189, 322, 348-49, 998, 1003).

which has been established and will be maintained by persons who are members of Local Union No. 562.

"I, therefore, agree to hereafter contribute ..% per 8 hour day to said fund and authorize my contributions to be used and expended by those in charge of the fund, in their sole judgment and discretion, for political, educational, legislative, charity and defense purposes.

"I understand that contributions are voluntary on my part and that I may revoke this agreement by a written notice to that effect mailed to the fund or to persons in charge thereof. I also understand that my contributions are no part of the dues or financial obligations of Local Union No. 562 and that the Union has nothing whatsoever to do with this fund.

Signed .....

Date: .....

Witness: ....."

Attorney Craig testified that he advised the officers of Local 562 that they could legally establish a separate fund, administered and maintained apart from and not commingled with, Union funds, to be used for political purposes (Tr. 1847-48, 1890, 1916-17; A. 1026-27, 1054-55, 1072-73); that money received into said Fund could not be made a condition of employment or retention of employment or of union membership (Tr. 1893, 1905, 1909-10, 1917-18, 1939; A. 1056, 1064-65, 1067, 1073, 1087); that the Local could solicit money for said Fund (Tr. 1899-1900; A. 1061); that the contributors should first sign a pledge card showing that the contributions were going into the separate political (including other activities) Fund and were voluntary (Tr. 1899-1900, 1925; A. 1061, 1078); that the contributions could be collected in any manner, including soliciting and collecting on the job site by Union stewards and job foremen or other Union officers or men,

when a man reported for work (Tr. 1904-05, 1909, 1913-1915; A. 1064, 1067, 1070); that contributions could be pledged and collected on a regular systematic formula based on amount of work (Tr. 1930-31; A. 1081-82); and that the Fund could accept contributions from some workers and exclude others (Tr. 1934; A. 1083-84).

In early January, 1963, signed contribution cards were executed by all contributors, both members and non-members working on jobs under the jurisdiction of Local 562 (Tr. 1811, Def. Exhs. U, U-1, U-2; A. 1001). Thereafter, contributions were accepted by the Voluntary Fund from those who desired to contribute, generally at the rate voted by the contributors of $1.00 per 8 hours working day for members and $1.50 per day for non-members (members were being assessed 50 cents per day by the Local itself, until the new contract was signed and check-off of dues and assessments for members at the rate of 2½% began on October 14, 1963) (Tr. 1812-13; A. 1001-02).

The 2½% assessment of member Journeymen Construction Pipefitters amounted to 95 cents for an 8 hour day worked in Zone 1, the St. Louis area. In October, 1963, a meeting was held of the contributors to the Voluntary Fund at which it was voted by the contributors that thereafter contributions to the Fund by non-members be increased to $2.00 per day and remain at $1.00 per day by members (Tr. 1816; A. 1005).

F. **Subsequent Changes in Dues and Contributions to Fund.** The membership increased its working dues assessments, effective January 1, 1966, to 3¾% which, for a journeyman's pay for an 8 hours day worked in Zone 1, amounted to $1.48 (Tr. 1817-19, G. Exh. 106; A. 1006-07). In November, 1965, the contributors to the Voluntary Fund met and voted to decrease the contributions of members from $1.00 per day to 50 cents per day, with non-

members remaining at $2.00 per day,[8] effective January 1, 1966 (Tr. 1822-23; A. 1009).

The rate of recommended contributions to the Voluntary Fund and of assessments by the Local of members remained the same until the date of the trial. After the return of this indictment, prior to the trial, the contributors to the Voluntary Fund, both members and non-members, met, pursuant to written notice, and by a secret ballot voted to continue the Voluntary Fund despite the indictment by a vote of 743 "Yes" and 5 "No". About 200 pipefitter contributors who were not members of Local 562, but worked on jobs under its jurisdiction, were present at this meeting and voted for the continuation of their voluntary contribution to the Fund (with the possible exception of 5) (Tr. 288, 1834; A. 128, 1017).

At its highest peak, working assessments of members of the local were 3¾% of gross pay (or $1.48 per day), in Zone 1 and it was recommended that contributions of 50 cents per day be made by members of the Local to the Voluntary Fund, for a total of about 5% of gross pay (Tr. 1817-19, 1820-21, 1823; A. 1005-07, 1007-08, 1009). It was recommended that non-members working under the jurisdiction of the Local, who could not legally pay working assessments to the Union, contribute $2.00 per 8 hours working day, or about 5% of their gross pay in Zone 1 to the Voluntary Fund (Tr. 1822-23; A. 1009).

G. **Management and Operation of the Voluntary Fund.** There was no evidence that any political contributions or expenditures were made out of the treasury of Local 562

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[8] The total of the dues and dues assessments and contributions to the Voluntary Fund of members always really exceeded the contributions of non-members to the Voluntary Fund due to numerous factors: higher pay in Zones 2 and 3 (rural Missouri) where most non-members worked and resided, wage increases, and higher pay for foremen (Tr. 1819-1832, 1856-1858; A. 1007-16, 1032-33).

which was maintained separate and distinct from the treasury and assets of the Fund (Tr. 260; A. 111). Likewise there was no evidence that any of the dues or assessments of Local 562 were ever paid into the Fund or were ever transferred from the treasury of the Local itself, or in any way commingled with the monies of the Fund (Tr. 178-287; A. 59-128).

During the indictment years, both the Fund and the Local rented and maintained offices in a building which belonged to the Local 562 Welfare Trust, administered by joint labor-management trustees (Tr. 179-80, 186-87, 1766-67; A. 60, 63-4, 971). The Local had three offices on the ground floor on one side of the building, while the Fund had two offices on the other side (Tr. 186; A. 63-4). The Welfare Office occupied the entire second floor (Tr. 187-88; A. 64-5).

Petitioner Lawler was the Director of the Fund until January 1965, and thereafter Petitioner Callanan was the director (Tr. 188, 251-52; A. 65, 102). The Fund also employed an office manager, bookkeeper, and collector who kept records and assisted in collecting the money for the Fund at its offices (Tr. 197-98, 210-12, 230-32, 257-60; A. 70-1, 79-80, 92-3, 109-10). The employee recorded the contributions to the Voluntary Fund in Cash Receipts Ledger Books (Tr. 210-12, 230-32, 257-59; A. 79-80, 92-3, 109-10) (Government Exh. 1-5) and disbursed the money under the direction of the Director of the Fund (Tr. 198-201, 210-12, 230-31, 258; A. 71-3, 79-80, 92-3, 109).

The contributions amounted to $286,029 in 1963, $289,783 in 1964, $415,963 in 1965 and $239,211 in 1966 (Tr. 293; G. Exh. 60; A. 131).

During the indictment period the Voluntary Fund made contributions, all by check, to candidates for Federal Office. In 1964 they totaled $97,347; in 1965, $8,919; and

in 1966, $45,146 (Tr. 294-295; A. 132). All contributions were made to DEMOCRATIC PARTY candidates.[9] Almost every contributor was a Democrat (Tr. 370-71, 962, 643, 679, 717, 738, 936, 997, 817, 1083, 1189, 1216-17, 1224, 1250, 1310; A. 172, 461, 300, 322, 347, 361, 446, 483, 412, 529, 595, 613, 617, 634, 674). No contributor was found who was a Republican.

Some of the contributions were either brought to or mailed to the Fund office by the contributor himself. The majority, however, were received on the job by the Union Steward, who, in turn, took them to the Fund office. In the absence of a steward, the foreman usually acted as the Union Steward, and also performed this task. When the contributions were received by a steward (or foreman), and were delivered by him to the Fund office, they were always accompanied by a printed sheet headed "Pipefitters Voluntary Fund." The sheet listed the names of the contributors, the number of hours they had worked, and the amount of each person's contribution (Tr. 192-93, 206-07; A. 67).

After January 1963 when new Journeymen Construction Pipefitters were employed on jobs under the jurisdiction of Local 562, the Voluntary Fund Cards, which lawyer Craig had designed, were distributed to these men, usually near the beginning of their employment, most often by the union steward, or in the absence of a

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[9] $10,897.38 Sen. Symington; $2,000.00 Dem. Cong. Com.; $35,000 Dem. Nat. Com.; $3,200 Cong. Sullivan; $150 Cong. Candidate McClanahan; $500 Sen. Candidate Harris; $4,000 Cong. Karsten; $5,000 Cong. Ichord; $4,300 Cong. Price; $3,000 Cong. Frazier; $1,000 Sen. Proxmire; $42,000 President Johnson; $2,500 Cong. Bolling; $2,500 Sen. Hart; $2,500 Sen. Carvel; $8,869.05 Sen. Long of Missouri; $3,195.50 Cong. Candidate Zablocki; $1,000 Cong. Candidate Ryan; $1,000 Cong. Candidate Stalbaum; $2,000 Cong. Candidate Race; $10,000 Sen. Douglas; $2,000 Cong. Candidate Fogarty; $1,000 Cong. Candidate Fallon; $1,000 Cong. Candidate Haney; and $1,000 Cong. Candidate Harding (Tr. 305-22; A. 139-50).

steward, by the job foreman (Tr. 342, 381, 409, 498, 627-28, 689, 727, 753, 984-85, 947; A. 154, 179, 196-97, 254, 289, 328-29, 354, 370-71, 474-75, 451).

These cards were signed by all members and non-members who wished to contribute to the Fund (Tr. 1810-11, 1873, 1899-1900; A. 1000-01, 1043, 1060-61). The men who did the collecting and filled out the sheets used varying terminology for the contributions they received, especially for money that was contributed by men for past weeks worked or when a man failed to contribute or delayed his pledged contribution. In a few cases these collectors referred to the contributions as "assessments", "back assessments" and "amount owed" (Tr. 216, 352, 399, 498-99, 633, 673, 710-11, 780, 904; A. 83, 161, 190, 254, 293, 318, 342-43, 387, 425-26). A great deal of effort was exerted by the government at the trial in an attempt to show that these words or designations were indicative that the contributions were in fact not voluntary. But each witness who used such terms testified that the contributions, both received and made, were in fact voluntary. The testimony of these witnesses is summarized in this Statement, *infra*, pp. 29-40, along with the testimony of defense witnesses on the subject of voluntariness of the contributions.

F.B.I. Agent Buckley, an accountant, testified that he had all the Records of the Fund in his possession for about one year[10] and that he found no money contributed to the Fund which was not accounted for in the Books and records of the Fund, if he assumed that the voluntary collection sheets of the stewards and the original entries of cash receipts in the Books made by the Fund employees were accurately recorded (Tr. 231-32, 238, 304; A. 93, 97, 138-39).

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[10] The records were returned to the petitioners shortly before the trial, after the Government had made copies of many of them (Tr. 231-32, 238, 300, 303-04; A. 92-3, 97, 136, 138-39).

Mr. Carroll Shelton, a Certified Public Accountant, the accountant for Local 562, was asked shortly before the trial in 1968 to audit the books and records of the Fund. He had been familiar with the Fund records, and had given advice with respect thereto, since 1964 (Tr. 1465; A. 774-75). He audited the Fund books and records from the period of January 1, 1963 through September 30, 1967, and found all of the money properly accounted for which was reflected on the Voluntary collection sheets as contributed. The money on deposit ($155,128) in the American National Bank and the Southwest Bank represented the difference between the collections and the disbursements, prior to that date (Tr. 1478; A. 784). He testified that time did not permit him to make a personal check with each and all of the contributing employees to undertake to verify the accuracy of the records as to their contributions.

At first an individual card was kept for each contributor at the Fund office, but this was soon discontinued in 1964 (Tr. 201-204, 212, 232, 247-48; A. 73-5, 80, 93-4, 102-03). Thereafter, there was no practical way for anyone, including petitioners, to determine whether the workers were really making their pledged contributions, or part or all of their pledges to the Fund (Tr. 213, 220-21, 233-35, 300-02; A. 81, 85-6, 94-5, 136-37). Indeed, F.B.I. Agent Buckley was unable to determine from the Fund records which were maintained whether all employees were contributing, or whether any particular individual employee was contributing his pledged amounts (Tr. 300-02; A. 136-37).

The Government, over the continual objection of petitioners (Tr. 267, 268, 296, 1246, 1281, 1305, 1345-46, 1457, 1520, 1632, 1668, 1736, 1741, 1761; A. 115-16, 133, 631-32, 655, 671, 696-97, 769-70, 811, 884-85, 908, 950-51, 954, 967), adduced evidence that during the months of June to December, 1966, the contributions to the Voluntary Fund

voted to suspend contributions to it and to make like contributions to the Callanan Gift Fund, pursuant to new pledge cards (Tr. 272, 295-96; A. 118, 132-33), because of petitioner Callanan's distressed financial condition. A total of $144,447.20 was paid into this fund which went as a gift to petitioner Callanan. The contributions to the Callanan Gift Fund were made in the same manner as the contribution to the Voluntary Political Fund (Tr. 446-47; A. 220-21). Sheets which were identified as Callanan Gift Fund sheets (Gov. Ex. No. 101), were admitted into evidence. The money collected was taken to the Union Hall (Tr. 447; A. 221) and turned over to Mr. Edward Steska, who served as a committee of one for the Gift Fund (Tr. 448; A. 222). The payments into the Callanan Gift Fund were about the same consistency as the payments into the Voluntary Political Fund (Tr. 279, 465; A. 123, 233).

H. Testimony of Stewards, Foremen and Contributors to Voluntary Fund as to Voluntariness of Contributions.

1. The Government's evidence. The Government called as witnesses 12 foremen and stewards who had made collections for the Voluntary Fund: Gissing, Williams, Detrich, Endermuhle, O'Laughlin, Stiffler, Marshall, Richardson, Conroy, Seeck, Polito and Collom. (Tr. 337-405, 888, 946, 435, 492, 619, 976, 663, 685, 722, 747; A. 152-94, 415, 450, 213, 250, 284, 469, 312, 326, 351, 367). All of these twelve men had been members of Local 562 longer than the indictment period, most of them from the beginning of the Voluntary Political Fund in 1949 (Tr. 367, 379, 946, 495, 664, 680, 711, 725, 733, 976-77, 436, 466; A. 170, 178, 450, 252, 313, 323, 344, 352, 358, 470, 214, 233). All twelve testified that each of them had always contributed to the Voluntary Political Fund (Tr. 474, 480, 773-74, 1000, 713, 671-72, 659, 508, 369-70, 961; A. 239, 242, 383, 485, 345, 317, 309-10, 260, 172, 460); that no one, including petitioners, had ever put any pressure on them to con-

tribute (Tr. 370, 398, 400, 955-56, 670, 677, 716, 475, 774; A. 172, 189, 190, 456-57, 316, 321, 347, 239, 383-84); and that they had never put any pressure on anyone else, nor had been told to do so by any petitioner or anyone else, to contribute (Tr. 400, 961-62, 506-07, 678-79, 717, 736, 476-77, 738, 935-36, 996-97; A. 190, 460, 259, 322, 347, 359-60, 240, 361, 446, 482-83); that they had never told anyone, nor knew of anyone, who was given less work or denied work or union membership, for failing to contribute (Tr. 961-62, 506-08, 642, 661, 678-79, 735-36, 738, 935-36, 774, 476-77; A. 460, 259, 299, 311, 322, 359-60, 361, 364, 446, 383-84, 240). All of them also testified that although they had given contribution pledge cards to new employees, they had always told such men that contributions were purely voluntary (Tr. 365-66, 393, 398, 953, 496, 501, 505, 680, 704, 715, 737, 738, 895; 756-57, 772, 984, 992-93, 471-72; A. 169, 186-87, 189-90, 455, 253, 256, 258, 322-23, 338-39, 346, 360-61, 372-73, 382, 474-75, 479-80, 236-37); and the men had brought their contributions to them voluntarily each week because they desired to contribute (Tr. 342, 356, 368-69, 378, 394, 399, 400-02, 497, 501, 645-46, 599, 398-400, 752-53, 463-64. A. 154, 163, 171, 177, 187, 190, 190-92, 253, 256, 301, 271, 189-90, 370-71, 231-32). All men who contributed had signed the Voluntary pledge cards (Def. Exhs. U, U-1, U-2). Although most of the men on their jobs had contributed to the Fund, in accordance with the recommendations voted at the meetings of the contributors, these foremen and stewards had heard or knew of employees who did not contribute and were in no way discriminated against (Tr. 358, 367, 403-04, 499-500, 741, 745; A. 164-65, 170, 192-93, 254-55, 362-63, 365-66).

These particular twelve stewards and foremen (except Collom who was the steward at Anheuser-Busch plant where there was no checkoff of dues and assessments) were called by the Government because they had used such words as "owed", "back assessments", or ("assess-

ments'' on the Voluntary Fund collection sheets (Tr. 352, 398-99, 502, 633-34, 673-74, 709-10, 904-05, 780; A. 160-61, 190, 256, 318-19, 342-43, 425-26, 387-88), but each of them explained that he had used such terms, not because any contribution was required, or coerced, but either inadvertently or loosely or from habit stemming from the days when he collected dues and assessments (Tr. 956, 501, 626-27, 634-35, 673-74, 905-06; A. 456-57, 256, 288-89, 294, 318-19, 426-27), or so he could answer the questions of the men as to how much they were behind on their pledges (Tr. 353, 645, 933-35, 645; A. 161-62, 301, 444-46, 301), or to indicate their pledge status (Tr. 399, 677-78, 683, 476; A. 190, 321, 324-25, 240)

COLLUM. Mr. Collum was the steward at Anheuser-Busch Brewery (Tr. 436; A. 214), the only place where members of the Construction Division[11] of Local 562 worked where there was no contract for checkoff of dues and assessments (Tr. 467-68; A. 234). These men were really maintenance men, and the Local had a separate contract with the Brewery. Most of them, however, contributed to the Fund, and their wage scale was the same as other construction pipefitters. Mr. Collum was sometimes called by the Secretary of the Local when men got behind on paying their dues and assessments, but he was never called with respect to contributions to the Voluntary Fund (Tr. 443; A. 218). He retained a copy of the collection sheets for payments of dues and assessments but did not retain such a copy of contributions to the Voluntary Fund because dues and assessments were mandatory (Tr. 476; A. 239-40).[12] He did, however, keep a list of those who

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[11] Members of the Metal Tradesmen Division of Local 562 (factory workers) whose wages were much lower than the construction workers, were not assessed any dues at all by Local 562, nor were they asked to contribute to the Fund (Tr. 968-72; A. 464-67).

[12] See minutes of expulsion of members for non-payments of assessments (Ex. App. 435, 443; Gov. Ex. 106).

were in arrears or ahead of their pledge to the fund, in order to answer questions of the men as to how they stood in the payments of their pledged contributions (Tr. 476; A. 239-40).

Three other men who had worked under the jurisdiction of Local 562, all non-members, also testified in behalf of the Government.

HENDRICKSON. Mr. Hendrickson, a member of pipeliners Local 798, Tulsa, testified that in 1966 he worked for an Oklahoma contractor, laying pipe from Warrensburg, Missouri into Illinois through Louisiana, Missouri (Tr. 806; A. 404). When they reached Columbia, Missouri they entered territory under the jurisdiction of Local 562 (Tr. 806; A. 404). Most of the men were not members of Local 562, and they told their steward, who was a member of the Kansas City Local, that they would not contribute to the Voluntary Fund of Local 562 (Tr. 806-07, 809-10; A. 404-05, 406-07). The workers had already heard of the Voluntary Fund (Tr. 810-11; A. 407). The steward called someone at Local 562 which person told the steward that the workers did not have to contribute to the Voluntary Fund as it was purely voluntary (Tr. 807, 812; A. 405, 408-09). Indeed, Local 562 thereafter turned the entire jurisdiction of the job over to the Kansas City Local and never took jurisdiction of the job at all.[13] (Tr. 809-10; A. 406-07).

A year or so later, in July 1967, this same witness, Mr. Hendrickson, asked the Superintendent of a job (whom he knew) at Centralia, Missouri to employ him (Tr. 797-98; A. 399). He worked on this job from July to November (Tr. 798; A. 399). This job was under the jurisdiction of Local 562 (Tr. 797-98; A. 399). About a week after

[13] Local 562, however, was not legally able to dispense with payments of fringe benefits to the Welfare Trust which went to both members and non-members.

he started to work, the steward (who was not a member of Local 562 but rather a member of the Jefferson City Local) spoke to him about the Voluntary Fund and presented him with a Voluntary card (Tr. 801-804; A. 401-03). The Jefferson City steward told him it was a purely voluntary contribution and that he did not have to contribute (Tr. 802, 812-13; A. 402, 408-09). He signed the card and contributed for two reasons: (1) as a courtesy to Local 562 since he was their guest and (2) the others on the job were contributing (Tr. 802, 805-06; A. 402-404). He understood and knew that the Local 562 Fund was a voluntary political Fund similar to COPE (Committee on Political Education-AFL-CIO) (Tr. 813, 821; A. 409-414). No one ever told him he had to contribute to the Voluntary Fund in order to work (Tr. 816; A. 411). Indeed, there were no members of Local 562 on the job at all (Tr. 817; A. 411), and he never spoke to any member or officer of Local 562 (Tr. 805, 816; A. 403-04, 411).

BAKER. The witness Norman Baker was also a member of pipeliners Local 798, Tulsa (Tr. 584-85; A. 261). Previously he had been a member of Cape Girardeau Local 318 (Tr. 585; A. 262), and had had experience working under the jurisdiction of Local 562 (Tr. 586; A. 262). He had signed a voluntary contribution card on two occasions (Government's Exhibits 112, 113; A. 265, 267). He testified that he entertained an understanding that payments to the Voluntary Fund were necessary in order to work (Tr. 590-99; A. 265-271), which he got from rumors (Tr. 615; A. 282). However, none of the petitioners, nor any officer or steward of Local 562 ever told him that he had to contribute in order to work (Tr. 615; A. 281). He accepted the rumors without inquiry of anyone (Tr. 616; A. 282).

COPELAND. Three Copeland brothers (Edwin, William and Leroy) were members of Cape Girardeau Local 318, and all worked a great deal under the jurisdiction of

Local 562. By February 11, 1964, following the strike by Local 562 in the second half of 1963, all three filed suit against Local 562—Edwin charging before the NLRB discrimination against 31 non-members on the Pea Ridge job during the strike; William charging the same against 5 non-members on the Farmington State Hospital job; and Leroy suing in U.S. District Court alleging discrimination against him by preventing him from being employed during the strike on the Pea Ridge job (Ex. App. 388, 425, Gov. Ex. 105). The charges all resulted from discharges of non-members by non-association contractors during the 1962 strike, and replacing them with members of Local 562.

Government witness Endermuhll, a foreman, testified on direct examination that in 1963 he was the foreman on the McDonnell Aircraft job over a crew of about 100 pipefitters, during part of which time he collected the Voluntary Fund contributions. They were made by everyone on the job except Leroy Copeland, who was not discriminated against in any way because of his failure to contribute (Tr. 499-501; A. 254-56).

Of the three brothers, only William W. Copeland testified. He testified that he was a member of Local 318 of Cape Girardeau, Missouri (Tr. 406; A. 195). He first worked under Local 562 jurisdiction in December 1962 at the Hercules Plant in Louisiana, Missouri (Tr. 406; A. 195). About three days after starting in that job, he was given a voluntary contribution card which he signed (Tr. 408; A. 196). He could not recall who gave it to him (Tr. 408; A. 196). He contributed $1.50 per day to the Fund from December 1962 until April 1963 when that job was completed (Tr. 409-10; A. 196-97).

He testified on direct examination with respect to the time he was given the card as follows (Tr. 408; A. 196):

"Q. Did you sign the card? A. Yes, sir.

"Q. All right. Did you know what it was? A. Yes, sir.

"Q. What was your understanding of what it was? A. That it was to be a voluntary donation for the Pipefitters Political Fund."

He read the card including that part which stated that he could stop his contributions at any time (Tr. 426; A. 207).

On May 1, 1963, he went to work on a Local 562 job at the Farmington State Hospital at Farmington, Missouri where he worked until June 1, 1963 when Local 562 called a strike against the members of the Mechanical Contractors Association (Tr. 411, 426; A. 198, 207-08). The contractor at Farmington was not a member of the Mechanical Contractors' Association and did not stop work, but Copeland was laid off and replaced by members of Local 562 during the strike (Tr. 427; A. 208). His layoff here had nothing to do with contributions to the Voluntary Political Fund (Tr. 430; A. 210).

After working under the jurisdiction of the Jefferson City Local 412 for awhile (Tr. 412; A. 198-99), he again worked under Local 562 jurisdiction for Murphy & Company in St. Louis and Anheuser-Busch Brewery (Tr. 413-14; A. 199). He transferred to Anheuser-Busch about August 1963 (Tr. 414; A. 199). He made contributions to the Fund until October 1963, when the Voluntary Fund payments were increased from $1.50 to $2.00 per day for non-members (Tr. 415-16; A. 201). He was informed of this increase by the steward (Tr. 414-15; A. 200). He testified that he declined to make a payment but his friend, Mr. Scaggs, also a member of Cape Girardeau Local 318 made the payment (Tr. 416; A. 201). Three days later there was a layoff at Anheuser-Busch, which included both the witness and Mr. Scaggs who continued to contribute (Tr. 418, 427, 431; A. 202, 208, 210). No

member of Local 562 was laid off (Tr. 427; A. 208). He was given no reason for the layoff and never inquired (Tr. 418-19; A. 202-03). Moreover, he never again tried to get employment through Local 562 (Tr. 419; A. 203).

The following day, immediately after his layoff, he and his brother filed the charges referred to above with the NLRB against Local 562 for their earlier dismissal at Farmington, and Pea Ridge in June of 1963, during the strike, but he never did file any charges for his layoff at Anheuser-Busch (Tr. 419-28; A. 203-09).

The day following the lay-offs of Copeland and Scaggs at the Brewery, Mr. Scaggs went to work on another Local 562 job (Tr. 432; A. 211), but Copeland never again went to the Hall of Local 562 to ask for work or any other job as did Mr. Skaggs (Tr. 434; A. 212-13).

The witness admitted that he had asserted to various people strong feelings against Local 562 (Tr. 428-29; A. 208-09), and he came forth voluntarily to testify against Local 562 before the grand jury in this case (Tr. 429; A. 209).

2. **The defense evidence.** A total of 77 members of Local 562 or pipefitters who work on jobs under the jurisdiction of Local 562 testified in behalf of the defense (Tr. 1080-1460, 1551-1765; A. 527-772, 832-970). Thirty-two of them either did not contribute to the Voluntary Fund, had never contributed, or did not contribute regularly under the formula voted on by the contributors (Tr. 1100, 1121, 1133, 1141, 1151, 1159, 1162, 1203, 1223, 1254, 1327-28, 1350, 1357, 1372, 1378, 1397, 1431, 1554, 1562, 1569, 1579, 1595, 1601, 1607, 1613, 1617, 1636, 1639, 1646, 1655, 1658-59, 1747; A. 541, 553-54, 561, 566, 572, 576-77, 578-79, 604, 617, 637, 685, 700, 704, 714, 718, 731, 834-35, 840, 844, 850, 861, 865, 869, 872, 875, 887, 889, 894, 900, 902, 958). Some, even foremen, who had worked steadily since the beginning of

the Fund in 1949, had never contributed to the Fund nor been spoken to about not doing so (Tr. 1333, 1100, 1121, 1607; A. 688-89, 541, 553-54, 869). One had never contributed because he was a Republican (Tr. 1607-08; A. 868-69). One foreman had always both refused to make collections for the Fund (Tr. 1103-04; A. 543), and refused to contribute because he was not in favor of some of the candidates supported by the Fund or did not feel he could afford it (Tr. 1103-04; A. 543). Another such foreman did not believe that money spent on politics was helpful to labor (Tr. 1129; A. 558). Others, some foremen, quit giving several years before the trial without being questioned or discriminated against (Tr. 1125-26, 1159, 1199, 1223-24, 1327-28, 1350, 1372-73, 1554, 1569, 1617; A. 556-57, 577, 601, 617, 685, 700, 714-15, 834-35, 844, 875). One foreman quit giving in 1965 because the Fund refused to support him when he ran for the Missouri Senate. He became angry and told Petitioner Callanan that he would no longer contribute. Petitioner Callanan told him to do as he pleased because the Fund was purely voluntary (Tr. 1200, 1203; A. 601-04). Callanan also told another non-contributing member the same thing (Tr. 1227-28; A. 619-20). Another foreman quit contributing because he disagreed with some of the Fund political endorsements (Tr. 1555; A. 835). Others just decided to quit, or had financial problems. The remainder made contributions when they chose to do so. All of these witnesses testified that they had never been discriminated against nor spoken to about not contributing, or not making the recommended contributions. All who had contributed testified that their contributions were purely voluntary (Tr. 1080-1460, 1551-1765; A. 527-772, 832-970).

Shortly after the defense stated its case, the Court stated —concurred in by Government Counsel—that "Of Course, whether it [the Political Fund] is voluntary or not is not the essence of this case * * *" (Tr. 1243; A. 629). As more

and more pipefitters testified that they either did not make contributions to the Fund or their contributions were voluntary, the District Court began to exert pressures to stop the continuation of such testimony. At the end of the fifth day of defense testimony, after about two days of such witnesses, the Court when adjourning at 5:30 p.m., announced that it would begin Court at 8:30 (rather than the usual 9:00) the next morning (Tr. 1762; A. 967).

The next morning, as hundreds of pipefitters were waiting in the corridors to testify, the Court called all counsel into its chambers What occurred in the Court's chambers is reported only in the form of an objection which was made when the Court convened (delayed because of such conference to 10:00 a.m.) as follows (Tr. 1762-65; A. 968-70):

> "Mr. London: May we approach the bench, Your Honor?
>
> (Thereupon the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)
>
> Mr. London: If the Court please, in view of the conversation that we had with the Court and counsel for the Government earlier this morning we, counsel for the defendants, have discussed the matter, discussed wherein the Court stated to us that in view of the fact that we had numerous additional witnesses to call of the same type that are members of the Union that have been called over the last two days, and that in view of the fact that these witnesses were numerous, that the Court, although permitting us to call these witnesses, would require that night sessions be held and that Saturday sessions [1,763] be held and that the Court would attempt to make arrangements for additional reporting service, we feel we would like to call these witnesses who would testify, as has some of the other witnesses who have preceded them, that

there was no compulsion for them to contribute to this Fund, that they had attended meetings wherein the rates of contribution were discussed and voted upon by the members, who would testify that all of the contributions to this Fund were voluntary, and that they knew that this Fund meetings and Union meetings, as well as the Fund meeting itself, were separate and apart, although as I indicated we would like to have all of these witnesses, we feel in view of the statement by the Court that it would be physically impossible for us as attorneys to adequately represent these defendants under the circumstances as outlined, and that the defendants would thereby under the conditions set forth be deprived of their right to effective assistance of counsel as guaranteed by the Constitution.

"We further feel that this procedure would deprive the defendants of a fair trial and due process by placing an undue hardship on the jury and burden the jury with the hours of work as has just been indicated. I believe yesterday we examined some thirty-plus witnesses. There are hundreds of more witnesses from this Union, and who have worked under the jurisdiction of this Union, who could be called, but under the circumstances as I have indicated that were explained to us, we think we at this [1,764] time will call no more of these witnesses.

"The Court: I take it, Mr. London, that your witnesses are all ready to testify that they are employees or members of 562, and that they participated in the Voluntary Fund and that their contributors have been voluntary, is that right?

"Mr. London: And an additional thing, Your Honor, some of them are members of 562, some are not.

"The Court: All right, that they are and have worked under the jurisdiction of 562?

"Mr. London: And also, as you indicated, their contributions were voluntary and also that the Fund is separate and apart from the Union itself, and that they have attended these meetings where these matters were voted upon.

"The Court: Well, of course, a great many of these witnesses did not testify about being separate and apart.

"Mr. London: Not every witness, of course, Your Honor, will testify as to exactly the same facts.

"The Court: The Court has no intention of limiting the number of witnesses, although the Court feels by reason of the authority of **Samuels v. United States**, which is reported in 232 Fed. 536, that the Court has the authority to limit it under the circumstances where the witness's testimony is merely going to be cumulative.

"The Court has indicated he has no intention of stopping you. I merely want to put on as many witnesses as can be put on during the course of the day. These jurors are being kept from their businesses, and to the extent that we can, we are going to run as long as we can during the day.

"Now, the Court is not asking you not to put on, and has told you before he had no intention of limiting the numbers of witnesses you put on. So whatever you do, you're doing on your own. The Court is not compelling you to do anything.

"All right, call your next witness.

"Mr. London: One moment.

"Mr. Randall: Under the circumstances we are not going to call any more of that class of witness.

"The Court: It's up to you to call them or not. We are here to hear them, and the jury is here, and the reporter is here, and it is 10:00 o'clock in the morning, and we are ready to go, and let you put on as many as you want."

We submit that the practical effect of the Court's procedure was to stop further pipefitters from testifying with respect to the issue of voluntariness.

I. **Instructions.** Numerous instructions requested by the defendants dealing with the issue of voluntariness were rejected by the Court (Tr. 1961-1980; A. 1096-1100). For example, defendants' refused Instruction BB (Tr. 1968; A. 1098) reads:

> "The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits money of a labor union from being used for such purposes. In this connection, money contributed by members of a labor union, voluntarily, for the purpose of being used for political purposes, with knowledge of such purpose is not money of a labor union. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and that they were made by the members for political purposes, then you must find the defendants not guilty."

We have already related that (*supra*, pp. 13-4), over objection, the jury was instructed that the fact that the payments into the Fund may have been made voluntarily by all of the contributors thereto does not, of itself mean that the money so paid into the Fund was not Union money (Tr. 2075; A. 1116), and that, in conformity with the position previously taken by the Court and Government, the jury was instructed that it could find that the Voluntary Fund was a Fund of the Local from any and all facts in evidence, specifying such findings as that the Fund was routinely collected by officials of the Local on the job site; that the payments into the Fund were determined by

a regular formula; that the payments began and terminated with employment on the job; and that moneys from the Fund were used to provide benefits to the Union members and were used for other activities which were permitted to be done by the Local itself (Tr. 2069-73; A. 1111-15). The jury was not given any direction or standards by the Court for determining when a Voluntary Political Fund never commingled with union money, becomes Union Money and its disbursement a Union Expenditure, subject to the proscriptions of Section 610. Instead the jury was allowed full range to make this determination.

J. Proceedings and Decisions of Court of Appeals. On appeal to the Eighth Circuit Court of Appeals, petitioners took the position that they were entitled to an outright reversal of their conviction, rather than a new trial. They maintained that the District Court had improperly construed and applied Section 610, with the result that the Government had not only failed to allege and prove an offense under Section 610, but also that the Section as thus construed and applied by the District Court was unconstitutional. Also, petitioners claimed that the jury had in effect acquitted them by its special finding.

In the Government's brief in answer to petitioners' brief before the Eighth Circuit in panel, and in oral argument there, the Government seemingly changed its position as to the interpretation of the statute, and took the position that the contributions of the Fund by the members and non-members of Local 562 had been made **involuntarily**; and now conceded that a Union acting through its officers, agents and members may form a political organization parallel to the Union and use Union personnel to solicit and spend direct voluntary contributions for Federal elections; and indeed that COPE and countless other labor political action groups had been so legally organized and operated.

In the light of this acknowledgment by the Government in its brief and oral argument, and for additional reasons, Judge Heaney ruled that the trial court's instructions were erroneous under the law and that a new trial should be granted in order to avoid facing the grave constitutional questions that had been created in this case by the application and construction of the Statute by the trial Court.

The majority opinion in panel in the Court of Appeals never actually ruled upon the issues as to whether or not the Statute was unconstitutional **as construed and applied by the District Court**, and consequently by the jury in this case. Without noticing the construction and application of Section 610 by the District Court in its instructions, the majority opinion, in ruling on the sufficiency of the evidence, stated that (p. 10; A. 1136): "It would appear to be unrealistic to believe that such a large number of workmen would make such substantial voluntary contributions to be used for political purposes unless they felt that their job security required them to do so."

The majority, in dealing with the First Amendment issue (i. e., constitutionality of the Statute), which it acknowledged to be "substantial and difficult" (A. 1137), ruled that Congress was "attempting to protect the individual union member's right to his own political views and the right to support or not to support them through money contributions." (A. 1138). Thus interpreted, the majority held that Section 610 did not offend the First Amendment rights of labor union members to engage in political association, stating that "Separate voluntary political associations by union members are not in any way proscribed by the statute." (A. 1139). Further, the majority, in dealing with the other difficult constitutional problems, said (A. 1139): "Section 610 only prohibits [working men] from being forced into [political contributions]." Indeed, the majority opinion, like the

Government's brief in the Court of Appeals, is permeated with words and phrases connoting the thought that the contributions to the separate Voluntary Fund, without the jury so finding, were involuntary. Of course, the majority in panel also conceded that there was evidence that a limited number of the workers did not make contributions to the fund and that no reprisals were taken against them (A. 1136). Thus, the majority never held that the contributions were proved to be involuntary.

Thereafter, on August 19, 1970, an unlimited rehearing was granted by the Eighth Circuit Court *en banc*. On August 26, 1970, petitioners wrote the clerk of the Eighth Circuit requesting permission to file a supplemental brief in connection with the rehearing of the case by the Court *en banc*. In doing so, petitioners specifically pointed out: "It is not our intention to rebrief the issues covered in our original brief but rather to deal supplementally with the issue considered by the dissent in the division decision" (A. 1150).

Thereafter, on September 10, 1970, petitioners were informed by letter from the clerk of the Court that such a supplement brief could be filed (A. 1151-52). A supplemental Brief was filed by petitioners raising and briefing the question of the correctness of the trial Court's instructions, and now specifically asking for a new trial. The Government filed a brief in Answer to it, without objecting to the question being heard and ruled on. Three of the seven members of the Court *en banc* ruled that the Statute as construed and applied by the District Court is unconstitutional (A. 1159-78). The other four members of the Court, in its opinion, *sua sponte*, dealt solely with the issue as to whether or not the Court could consider and rule upon this question and held that it could not (A. 1154-59). This particular issue was never briefed by the parties. The majority of four judges *en banc* also did not rule upon the grave constitutional issues that were raised by petitioners in their

original briefs as to whether or not Section 610, as construed and applied by the District Court, was unconstitutional, except to state that the "judgments of conviction and sentences imposed are affirmed for the reasons set out in the panel majority opinion filed June 8, 1970" (A. 1154).

All of the dissenting Judges held that the instructions were prejudicially erroneous (A. 1159-78). Further, Judge Heaney in his dissenting opinion, joined by Judges Lay and Bright, ruled, *inter alia*, that the refusal of the majority to rule on this issue (and thereby avoid the Constitutional questions) was in direct conflict with many decisions of this Court (A. 1159-68). In addition, Judge Lay in his dissenting opinion, joined by Judges Heaney and Bright, held that 1) the trial Court's instructions were in fact attacked as error by petitioners in their original briefs, 2) the Court of Appeals set aside the original submission of the appeal, directed the parties to file supplemental briefs for the benefit of the Court *en banc* and the petitioners specifically questioned the propriety of the instruction in said brief without any objection or claim of abandonment by the government, and 3) in the public interest and to guard against manifest injustice such an obvious error as the instructions presented should be corrected (A. 1168-78).

SUMMARY OF ARGUMENT

I

Section 610, Title 18, U.S.C. prohibits political contributions and expenditures by labor unions. Here, the indictment alleged and the evidence showed that political contributions were made by the Voluntary Political Fund. The indictment charged that the Voluntary Fund was actually a fund of the petitioner union, which was created and maintained as a device to evade the proscriptions of Section 610. The evidence however clearly showed

that the Voluntary Fund was never concealed in the sense that it was hidden from the public and governmental attention, had been in existence for almost twenty years prior to the return of the indictment, and that vast numbers of government officials, from the President of the United States on down, had received contributions therefrom.

The jury was instructed over petitioners' objection, that it could find the petitioners guilty of a violation of the law even if it found that all the contributions to the Voluntary Fund were **voluntarily made** by individual members of the union and other individual pipefitters who worked on jobs under the jurisdiction of the union. The evidence clearly showed that the funds of the Voluntary Fund were never commingled with any union moneys, and that the Fund was a separate political organization or committee. Clearly, the evidence was insufficient to show and establish that the contributions to the Fund were made **involuntarily**, even if that issue had been submitted to the jury (of course, petitioners requested that the issue be submitted). Indeed, the Government abandoned this claim in its requested submission of the case to the jury.

Under the above the evidence was insufficient to prove a violation of Section 610 in the light of the legislative history of Section 610 which shows a clear legislative intent to exclude a union members' political Fund from the orbit of the Statute. The legislative history shows and no one in Congress doubted that labor unions could create organizations which could receive funds from union members and make political contributions, provided the contributions were made by the members **voluntarily** and were **not general dues** of the union itself.

II

The money contributed to the federal candidates was in no legal or real sense the money of the Union, Local 562. Confronted with the legislative history that Congress in-

tended to permit some such Union Political Fund which had an intimate union connection with the administration of such a fund, the government attempted to prove that petitioners had transferred ownership of the monies for the political contributions from the Voluntary Fund to the Local Union. Thus, the indictment alleged that the Fund was established for the purpose of "concealing" that the Union was making political contributions. Such an allegation is completely false and almost fraudulent, since the Fund had existed 20 years with full governmental and public attention and knowledge in all details, and high government officials repeatedly accepted the contributions.

The Trial Court instructed the jury at government request (and over petitioners' objections) that the fact that contributions to the Fund were voluntary, does not mean that the money was not union money. On appeal the government changed its position on the issue of voluntariness, and argued that unions acting through its officers may legally form a political organization and solicit voluntary contributions. Also, in the government's Brief in Opposition it argues that this case "does not involve a voluntary organization" (p. 13). Thus, we submit that the government has effectively now conceded that only the issue of voluntariness could conceivably convert the Fund's money into union ownership. The Trial Court thus erred in refusing to submit this issue to the jury.

If this Fund is found violative of the Statute, without determining the issue of voluntariness, all labor funds in America violate the Statute, as well as many corporate funds and other procedures for political contributions by corporate officers and wealthy individuals.

III

The Courts below construed Section 610 as prohibiting officers, agents and members of a union from forming a parallel political organization and utilizing the union lead-

ers, officers and agents in such political organization, in obtaining, pooling and expending of direct voluntary contributions for political purposes.* To prohibit union members from voluntarily pooling their financial resources in political association, in an organization separate from the union, through their chosen leaders, raises more serious constitutional doubts than the political expenditures made by the union itself in **United States v. C.I.O.**, 335 U.S. 106, 68 S.Ct. 1349 (1948). See also **United States v. U.A.W.**, 352 U.S. 567, 77 S.Ct. 529 (1957), where three Justices held the statute to be unconstitutional, with the majority not resolving that issue.

First Amendment rights enjoy a preferred status in our constitutional scheme (**New York Times Co. v. Sullivan**, 376 U.S. 254, 269-270, 84 S.Ct. 710 (1964), and the most fundamental of all such First Amendment rights is the right to political association and expression. **Sweezy v. New Hampshire**, 354 U.S. 234, 77 S.Ct. 1203 (1957); **N.A.A.C.P. v. Button**, 371 U.S. 415, 430, 83 S.Ct. 328 (1962). Restraints on freedom of association in the area of political discussion would result in evils far more serious than any which the restraints seek to prevent. **Stromberg v. California**, 283 U.S. 359, 369, 51 S.Ct. 532 (1931).

If Section 610 is construed to apply to the Voluntary Fund, then it is unconstitutional as limiting the First Amendment rights of union members to associate in political expression.

IV

Section 610, as construed and applied by the Courts below and on its face, is so vague, indefinite and uncertain as to deprive petitioners of due process of law and fails

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* The government on appeal has argued that the contributions were not **voluntary**, but at **trial** the government urged and the Trial Court agreed, that voluntariness was not the decisive issue in the case.

to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments.

The Statute is so vague that experienced federal appellate Judges disagree on the proper construction of the Statute. In light of this the petitioners should not be incarcerated and held accountable for doing something that they did on advice of counsel and where experienced judges admittedly reach different conclusions as to what can or can not legally be done. Surely, the Statute should be held void as unconstitutionally vague and indefinite.

V

The Statute as construed and applied by the Court below and on its face arbitrarily discriminates against labor unions, its members and persons of the laboring class, depriving them of liberty and property without due process of law in violation of the Fifth Amendment. Further, the Statute as applied by the Court below, also unlawfully abridges the rights of petitioners and all union members to vote and to choose their senators and representatives in Congress, as guaranteed by Article I, Section 2 of the Seventeenth Amendment to the Constitution of the United States. Such application by the Court is discriminatory and requires union members to discard their only means of political expression involving their livelihood, their union.

VI

The jury specifically found that "a wilful violation of Section 610, Title 18, United States Code, was not contemplated" by any of the petitioners. The proscriptions contained and set forth in Section 610 are *malum prohibitum*. Petitioners submit that where the substantive offense is *malum prohibitum*, criminal conspiracy (18 U.S.C., § 371) requires knowledge that the conduct that is the

purpose of the conspiracy is unlawful (or is to be effected by unlawful means) and a definite and specific intent to do that which has been declared unlawful. Therefore, we submit that the special verdict returned by the jury (i.e., wilful violation not contemplated) was in effect an acquittal.

VII

The majority of the Court of Appeals *en banc sua sponte* refused to rule on the question as to whether the trial Court's instructions were incorrect. The majority held that it could not legally rule, even though petitioners objected to the instructions at trial, because petitioners prayed for reversal and discharge in their original brief filed in that Court and did not pray for a new trial.

The majority's holding that the instruction was not raised as error by petitioners in their original brief is incorrect and completely ignores the heart of the matter being litigated (i.e. whether involuntariness was a necessary element in this case). Further, since Section 610 does not proscribe use of voluntary funds, the majority passed on the constitutionality of the Statute without giving the Statute its intended construction. Constitutional validity of legislative action should not be passed upon until the conflict is unavoidable.

Further, the Court of Appeals set aside the original submission of the appeal, directed the parties to file supplemental briefs for the benefit of the Court *en banc*, after petitioners specifically requested permission to argue that the instruction was erroneous. The government filed a brief on the merits on the issue and never claimed abandonment. To guard against manifest injustice, such obvious error should be corrected, especially where the Court granted the request to brief the issue, petitioners did so and the government did not object.

ARGUMENT

I

All Courts Below Improperly Construed Section 610, Title 18, U.S.C. in Holding That the Indictment Alleged an Offense and the Evidence Was Sufficient to Sustain a Conviction for Conspiracy to Violate Section 610, Title 18, United States Code, Where Both the Indictment and Evidence Showed That the Funds Expended for Political Purposes Were Not Funds of the Union and Were Never Commingled With the Union Funds, But Instead Were Funds of a Political Organization or Committee Which Received Its Funds From Direct Voluntary Contributions From Individual Members of the Union and Other Individual Pipefitters Who Worked on Jobs Under the Jurisdiction of the Union.

Section 610, Title 18, U.S.C. provides in pertinent part as follows:

> "It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in * * * Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, * * *.
>
> "Every * * * labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every * * * officer of any labor organization, who consents to any contribution or expenditure by the * * * labor organization, * * * shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more

than $10,000 or imprisoned not more than two years, or both.

"For the purpose of this section 'labor organization' means any organization of any kind * * * which exist for the purpose, * * * of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work."

By its language, Section 610 only prohibits political contributions and expenditures by labor unions. Of course, the political contributions were not really made by Local 562, and no contention was ever so made. This is apparent even from the indictment. What the indictment alleges, and the Government has always claimed, is that the Voluntary Political, etc. Fund was really a fund of Local 562, and was created and maintained as a device to evade the proscriptions of Section 610. In fact, however, the Political Fund was never concealed in the sense that it was hidden from public and Governmental attention. It was in existence for almost 20 years prior to the indictment with vast numbers of Government officers, from the President on down, receiving contributions therefrom. Its close association with the Local had to be apparent to all recipients of contributions because the top official of the Local was the Director of the Fund and signed the contribution checks.

It seems to us, therefore, to be a question of law as to whether or not the procedure employed in the instant case was prohibited by Section 610. Indeed, every fact, save one, relied upon by the Government as indicating that it was a device to evade Section 610 were without dispute. The fact in dispute was whether some of the contributions to the Fund were **voluntary**. The jury was instructed that it could find the defendants guilty of a violation of the law even if it found that all contributions to the Fund were **voluntary**. It was undisputed that con-

tributions to the Fund were routinely made at regular intervals at job sites; that they were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union; that they were determined by a formula based upon the amount of hours or overtime hours worked upon a job under the jurisdiction of the union; that they were at one rate for 562 members and at a different rate for members of other unions; that they began, continued and terminated with employment on a job under the jurisdiction of the union; that monies of the Fund were used to provide benefits to union members; that non-members were not charged any dues and assessments, including travel card dues in the amount of eight dollars per month; that monies of the Fund were used in part to promote activities permitted to the union by its Constitution and by-laws; that contributions to the Fund were only requested and received from Journeyman Pipefitters working on jobs under the jurisdiction of Local 562, and not from any other classes of persons or organizations; that expenditures from the Fund were under the control of its director who was also the principal officer of the union; and that records used in the collection of the contributions to the Fund were similar to those employed from time to time by the union in the collection of its regular dues and assessments.

These were the items, and all of them, which the Government asked the Court to instruct the jury to consider to determine whether the Fund was in fact monies of the union and a device to evade the law. As we have set forth in the Statement, the Court, at the request of the defendants, added items 10 through 17 to the instruction, all relating to voluntariness, except one, the fact that the monies of the Fund were kept separate from the monies of the union, also a fact not in dispute.

Before further discussion of the statute, we submit that the evidence was insufficient to show and establish that the

contributions to the Fund were made involuntarily—even if that issue had been submitted to the jury. The fact that the Government abandoned this issue in its requested submission of the case to the jury is indicative of the tenuousness of its proof that the contributions to the Fund were coerced by the union. The bits of evidence which were stressed in the Court of Appeals, and perhaps may be repeated here, evaporate with a reading of each of the witnesses' entire testimony.

The evidence on this issue has been set forth in detail in the Statement, and we shall not undertake to repeat it here. But it seems apparent that what the several judges who have heretofore considered this case have done is to take as evidence of involuntariness the facts that, in their view, the contributions were large and the percentage of contributors great. Indeed, the majority opinion below frankly states this proposition (p. 10):

> "It would appear to be unrealistic to believe that such a large number of workmen would make such substantial voluntary contributions to be used for political purposes unless they felt that their job security required them so to do."

The inference thus drawn is erroneous, but a natural one for those inexperienced with construction union men. To construction union workers, who move from employer to employer without any company identification, the union constitutes many things that to others are divided. It is not just their representative in dealing with employers concerning grievances, wages, etc.; it is, indeed, also the source of their employment and the source of their pensions, sick, vacation and other fringe benefits. Unlike other workers, the construction union represents to them both company-employer and union. It is all they have to look to for existence and security. Here, Local 562 was as beneficial to the members of the rural locals as

to its own members for they shared equally with members both in wages and fringe benefits. Certainly, the inference stated in the majority opinion below, which is quoted above, was dispelled by the contributors themselves when they met, both members and non-members, after the indictment was returned and voted by secret ballot to continue their contributions in the same amount by a vote of 743 to 5.

Certainly, the evidence was insufficient to prove a violation of Section 610 in the light of the legislative history of Section 610 which shows a clear legislative intent to exclude a union members' political Fund from the orbit of Section 610.[14]

Before relating the legislative declarations as to the scope of Section 610, we briefly state the history of the statutes which are predecessors to Section 610. In 1907 Congress outlawed political **money contributions** by corporations (34 Stat. 864). In 1925, this provision was incorporated in the Corrupt Practices Act, where it was broadened, by changing "money contributions" to "contributions" and by making the receipt of such contribu-

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[14] This is the first case which the Government has ever prosecuted where the money expended for political purposes did not come from union dues. However, the word "expenditures" has been challenged several times. In none of the reported cases was a conviction sustained. In three cases it was held that the political expenditure there involved was not prohibited by the statute. **United States v. CIO**, 335 U.S. 106; 68 S.Ct. 1349 (1948); **United States v. Painters Local Union No. 481**, 172 F.2d 854 (2 Cir., 1949); **United States v. Construction and General Laborers Union No. 264**, 101 F. Supp. 869 (W.D. Mo. 1951). In two cases, although the money expended for political purposes had its source in union dues, the Court found no violation of the statute on some theory of voluntariness. **United States v. Warehouse and Distribution Workers Union Local 688**, 47 L.R.R.M. 2005 (E.D. Mo. 1960); **United States v. Anchorage Central Labor Council**, 193 F.Supp. 504 (D. Alaska 1961). **United States v. UAW-CIO**, 352 U.S. 567, 77 S. Ct. 529 (1957); dealt only with the sufficiency of the indictment, and later resulted in an acquittal.

tions an offense (43 Stat. 1070).[15] During World War II, in 1943, its provisions were broadened for the duration of the War, by the War Labor Disputes Act of 1943 (Smith-Connally Act), to cover labor unions (57 Stat. 167). In 1947, by the Taft-Hartley Act, its provisions were permanently extended to labor unions, and the act was broadened to cover expenditures in connection with Federal elections (now 18 U.S.C. 610).

There is very little legislative history concerning the provision which was inserted in the War Labor Disputes Act of 1943. Mr. Justice Reed, speaking for the Court, summed up what there is, in **United States v. Congress of Industrial Organizations**, 335 U.S. 106, 115, 68 S.Ct. 1349 (1948), as showing that Congress felt "that it was unfair to individual union members to permit the union leadership to make contributions from **general union funds** to a political party which the individual member might oppose." (Emphasis added.) On the Senate floor a proponent of the provision stated that a union member will not "object very gravely to a law that protects him by putting safeguards around the funds that are taken from him as dues." 89 Cong. Rec. 5792, June 12, 1943.

When the statute was made permanent in 1947 as a part of the Taft-Hartley Act, and extended to cover "expenditures", questions were directed to sponsoring Senator Taft, which he answered, on the Senate floor in connection with the Conference Report, as to what constituted an "expenditure" within the meaning of the act. Although there was some disagreement even then as to what was a political "expenditure" under the act, all were in agreement that coverage of the act depended on the source of the funds received and expended in making the political expenditure, that is, whether the money came from general union

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[15] We have found only one reported prosecution under this statute. **United States v. United States Brewers Ass'n**, 239 Fed. 163 (W.D. Pa. 1916).

dues, or was given by union people to a special organization earmarked for political purposes. (93 Cong. Rec. 6437-6441, 6448-49, 6523-24). Most significantly here, no one doubted that labor unions could create political organizations which could receive funds from union members, and make political contributions and expenditures therefrom, provided the contributions were made by the members of the union **directly** to the political organization, and were not **general dues** of the union itself.

At that time the Political Action Committee of the CIO was already in operation, and had made large political contributions, as well as expenditures, in the 1944 elections, which along with other political expenditures and contributions by Labor Unions themselves, had been the subject of a congressional investigation. **Senate Report No. 101,** 79th Cong., 1st session, P. 23 (1945); 93 Cong. Rec. 3586; **H. R. Report No. 293,** 78th Cong., 2d Session (1945). Prior to the 1944 election campaign, the CIO and four international affiliates contributed over $600,000.00 to the PAC which was spent during the campaign on political expenditures rather than contributions. During the campaign PAC also had an individual contributions account and in addition organized the **National Citizens Political Action Committee** to solicit direct contributions from Union members. The two combined collected and spent over $850,000 for political contributions. **Senate Report No. 101,** 79 Cong., 1st Session, P. 23.[16]

In this Report the Republican Minority commented that:

"If the Political Action Committee had been organized on a voluntary basis and obtained its funds

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[16] PAC successor, COPE continued this dual practice in the 1956 election, making political contributions from individual contributions in the amount of $428,000. **Senate Report No. 395, 85 Cong., 1st Sess.,** Special Committee to Investigate Political Activities, Lobbying, and Campaign Contributions, p. 116 (1957).

from voluntary individual contributions from the beginning, there could be no quarrel with its activities or program and in fact both are desirable in a democracy" (p. 24).

Senator Taft repeatedly stated that these political contributions and expenditures by the PAC were perfectly legal. Following are excerpts from the Congressional Record of June 5, 1947, relating to this subject, which conclusively show that Congress did not intend to prescribe the practice employed by the petitioners here.

"Mr. Taft: No; I said that union funds could not be used for that purpose. * * *

"* * * The PAC is a separate organization which raises its own funds for political purposes, and does so perfectly properly. The Smith-Connally Act prohibited the making of contributions by unions to the PAC, yet those unions took the position that they could use their funds for the publication of pamphlets for or against candidates throughout that election, and they evaded the entire law by saying that was not a contribution—not even an indirect contribution—to the candidates who received the benefit of that procedure. That is what this provision of the House bill is intended to reach, if it be agreed to" (93 Cong. Rec. 6437).

* * * * * * * *

"Mr. Taft: * * * Such an association [National Manufacturers Association] could receive money by direct contributions from individual members, just as the **CIO-PAC can properly operate as a political organization, raising its funds from individual members.** In the same way the National Manufacturers Association could do the same thing. But no corporation could contribute to the National Manufacturers Asso-

ciation, and no labor union could contribute to the PAC" (93 Cong. Rec. 6438). (Emphasis added.)

* * * * * * * *

"Mr. Taft: * * * As to the association [National Association of Manufacturers] itself, it seems to me the conditions are exactly parallel, both as to corporations and labor organizations. Such an association receiving corporation funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if it got its fund from labor unions, would violate the law. If the labor people should desire to set up a political organization and obtain **direct** contributions for it, there would be nothing unlawful in that. If the National Association of Manufacturers, we will say, wanted to obtain individual contributions for a series of advertisements, and if it, itself, were not a corporation, then, just as in the case of PAC, it could take an active part in a political campaign. But the prohibition is against a labor organization or a corporation participating in an election either by a contribution to somebody else or by direct expenditure of its own funds. That has been understood to be the law of corporations for many years, and until labor organizations were placed under the terms of the Smith-Connally Act, no one supposed that corporations could make direct expenditures without it being considered a contribution. But after the labor organizations were included, that question was raised. In order that it might be finally resolved in this bill, we made it perfectly clear that it covers either a contribution to somebody else or an expenditure of one's own funds for the same purpose, in connection with an election" (93 Cong. Rec. 6439). (Emphasis added.)

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"Mr. Magnuson: Mr. President, if the Senator will yield, let me ask him another question. All the funds of labor unions come from dues paid by their members. All the activities of the unions are based upon expenditure of funds provided by dues. That money is in the union's treasury. If the pending bill should become law it would mean that all labor organs which are now in existence would, from now on, be prohibited from participating in a campaign, favoring a candidate, mentioning his name, or endorsing him for public office?

"Mr. Taft: No; I do not think it means that. The union can issue a newspaper, and can charge the members for the newspaper, that is, the members who buy copies of the newspaper, and the union can put such matters in the newspaper if it wants to. The union can separate the payment of dues from the payment for a newspaper if its members are willing to do so, that is, if the members are willing to subscribe to that kind of a newspaper. I presume the members would be willing to do so. A union can publish such a newspaper, **or unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions,** just so long as members of the union **know** what they are contributing to, and the **dues** which they pay into the union treasury **are not** used for such a purpose.

"Mr. Magnuson: I think all union members know that a part of their dues in these cases go for the publication of some labor organ.

"Mr. Taft: Yes. How fair is it? We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute, without being asked to do so specifically, and without having a right

to withdraw their payments, to the election of someone whom they do not favor? Assume the paper favors a Democratic candidate whom they oppose or a Republican candidate whom they oppose. Why should they be forced to contribute money for the election of someone to whose election they are opposed? If they are asked to **contribute directly** to the support of a newspaper or **to the support of a labor political organization,** they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. **But the prohibition is against labor unions using their members' dues for political purposes,** * * * and perhaps in violation of the wishes of many of its [members]" (93 Cong. Rec. 6440). (Emphasis added.)

* * * * * * * *

"Mr. Magnuson: Would the Anti-Saloon League, for example, be prohibited from issuing pamphlets against a political candidate?

"Mr. Taft: As I understand, the league would probably receive contributions from individuals, and it would be like the PAC or any other organization which was organized for political purposes" (93 Cong. Rec. 6440).

* * * * * * * *

"Mr. Taft: Yes, and it is my opinion. The same thing is true, let us say, of the PAC, if the PAC collects funds from labor unions, rather than from individuals.

"Mr. Kilgore: Yes.

"Mr. Taft: The PAC has ordinarily collected its funds from individuals.

"Mr. Kilgore: Yes" (93 Cong. Rec. 6447).

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"Mr. Ellender: May I say to the Senator from Florida it is only in the event that union funds are used for political contributions that a union becomes liable. Mr. Green can talk all he wants to, if he pays for his own time or if the members of the union desire to make individual contributions for such a purpose" (93 Cong. Rec. 6522).

No one doubted that a union could establish a political organization for the purpose of receiving ear-marked political monies directly from union members as was done by Local 562. This practice has continued since the enactment of Section 610. Twelve National Labor Political Committees spent about 2 Million Dollars on the 1960 election campaign, Alexander, **Financing the 1960 Election** (Contained in **Studies in Money in Politics**, p. 420, 1962). Mr. Justice Frankfurter stated in **International Association of Machinists v. Street**, 367 U.S. 740, 813, 81 S. Ct. 1784 (1961), that COPE had spent $1,681,990.42 during the last three fiscal years on political matters.

Commentators have interpreted Senator Taft's remarks as follows:

"By this expression of intent Senator Taft indicated that unions could organize separate associations as the CIO had already done with its Political Action Committee and the AFL-CIO later did with its Committee on Political Education. The test was that these separate associations must be supported solely by voluntary contributions with no use of any union member's dues. If money from dues was used, it would be violation of the statute." **Comment**, 46 Marquette Law Rev. 364, 366 (1963).

"One of the main reasons Congress passed the 1947 amendment to the FCPA was to protect the rights of those union members who find themselves in the minority on a given political issue. In line with

this purpose, all the speakers taking part in the debate on the act agreed that the validity of a political expenditure was to be tested by the source of the funds. Voluntary donations were to be available for any use desired." Clover, **Political Contributions by Labor Unions**, 40 Texas Law Rev. 665, 670 (1962).

When the Supreme Court, in **United States v. C.I.O.**, supra, 335 U.S. 106, 68 S. Ct. 1349 (1948), gave the word "expenditures" a narrow construction, in holding the indictment insufficient to state an offense, the dissent, who found the statute to be unconstitutional, stated Senator Taft's interpretation of the statute as follows (335 U.S. at 135-138):

"The discussion ranged around a great variety of possible specific applications, with concentration upon both the scope and the validity of the provision. The Senate sponsor responded to a flood of inquiries with candor and so far as possible with precision and certainty concerning particular situations under his view of the section's criterion, although in numerous instances he was equally candid in stating doubt or disability to give positive opinions, at times in the absence of further facts.

"What is most significant for the question of coverage, however, and for the Court's construction in this case, is the fact that in making his responses to the numerous and varied inquiries he tested coverage invariably or nearly so by applying the very criterion the Court now discards, namely, the source of the funds received and expended in making the political publication.

"That is, in his view that the primary purpose of the amendment was 'minority protection,' the line drawn by the section was between expenditure of funds received by the union expressly for the purpose

of the publication and earmarked for that purpose and, on the other hand, expending funds not so limited by the person or source supplying them. There was strong opposition to the provision and spirited exchange between proponents and critics of the measure concerning its wisdom and its constitutionality. But there was no disagreement among them that the sponsor's test was the intended criterion. * * *"

It is clear that Congress in enacting Section 610, not only was sensitive to the constitutional implications of the statute, but also was aware of the need for labor unions to participate in politics, so long as the dues of a dissenting minority were excluded. Although the Republicans were in control of Congress, they needed the help of Democrats to pass the **Taft-Hartley Act** over the President's veto. 93 Cong Rec. 7488. They readily gave strong assurances to doubting Democrats that union members could continue to spend money in politics, and intended that they could do so, through their chosen leaders by forming parallel political organizations to obtain and expend direct voluntary contributions for political purposes.

The impact of unorganized individuals of ordinary means on politics is very little, which necessitates association and central direction. Unions, which are associations of working men with common interests, have been political active in varying degrees since their formation. Unions have influenced social and economic reform both in the corporate plant and in the governmental process. Political participation was necessary for union birth and is still essential to union survival. **Machinists v. Street**, supra, 367 U.S. 740, 812-816, 81 S. Ct. 1784 (1961, Frankfurter dissent); **United States v. C.I.O.**, supra, 335 U.S. 106, 144, 68 S. Ct. 1349 (1948, Rutledge concurring). Now that unions have obtained legal standing, corporations and business men exhibit concern for the union member who is a political dissenter. They assert an interest in the right-to-

work laws, posing as protectors of individualism, whereas in reality they are primarily concerned with their own self interest. See **Labor in America**, Ch. XIV, Labor in Retreat, by Foster Reah Dulles (1949). If unions are to survive, they must counteract the political influence of their economic enemies. As Mr. Justice Frankfurter stated in **Machinists v. Street**, supra, at 814-815: "It is not true in life that political protection is irrelevant to, and insulated from, economic interests. * * * Neither is it true for labor."

Corporate growth today is even greater than union growth. Though with imperfections, the union is a more democratic institution than the corporation dominated by a few major stockholders controlling the board of directors. On the other hand, most union leaders are democratically elected and the unsatisfactory can be removed from office. In our democratic government, organized associations with conflicting interests strive to further the cause they endorse. Their ability to do so today depends largely on the extent of their financial ability, for political success stems largely from the mass medias of communication which costs more and more money. Employer, professional and other associations are active politically and encourage employee and member involvement in politics. Many professional associations, including integrated Bar Associations, are active in politics, yet are in no way controlled by law and spend the money of minority interests without their consent. **Lathrop v. Donohue**, 367 U.S. 820, 81 S.Ct. 1826 (1961). Even churches are active in politics. More recently the charitable foundations, endowed by corporations and wealthy individuals, have become active in politics. These non-profit organizations are politically influential, particularly since the foundation executives are most often chosen from corporate and other employer groups. **Unions and Federal Elections**, 12 St. Louis Univ. Law J. 358, 360, 362.

The Chairman of the Democratic National Committee testified that a National Party spends more than 15 million dollars on a presidential campaign (Tr. 887). In 1964 the cost of running for all public offices was about $200 million. Cummings, **The National Election of 1964**, 158 (1966). The 1964 Senatoral race in New York between Kennedy and Keating cost four million dollars.

During the 1956 presidential campaign, 12 families contributed over one million dollars—more than all unions combined. Twenty-nine large oil companies contributed $344,097 to the Eisenhower campaign while 37 advertising agencies' executives donated $51,000, and 47 underwriters gave $235,000. In 1964 the American Medical Association contributed $100,000 to the Goldwater campaign. Kovarsky, **Unions and Federal Elections**, St. Louis Univ. Law J. 358, 364 and authorities there cited; McKean, **Party and Pressure Politics**, 349-50 (1949); Alexander, **Financing the 1960 Election** (contained in **Studies in Money in Politics**), p. 61 (1962).

Political participation is an extension of other services rendered by unions. Unions frequently provide housing, medical care, education, legal aid (See **Bhd. R. R. Trainmen v. Virginia Bar**, 377 U.S. 1, 84 S.Ct. 1113 (1964); **United Mine Workers v. Illinois Bar**, 389 U.S. 217, 88 S.Ct. 353 (1967)), and other similar things to their members. Union members are not inclined individually to be politically active and their principal contribution to politics consists of donations to union organizations for political activity. Indeed, a union leader cannot ignore politics and retain his position, for the rank and file member finds that union leaders participating in political activities are more effective than those that do not. Money is essential to the political scene.

Moreover, candidates for office are usually professionals, proprietors, managerial employes, small businessmen,

or extremely wealthy men, and very few are wage-earners. This makes it essential that union leaders remain in politics if the political welfare of wage-earners is not to suffer. For few, if any, in Congress have wage-earning backgrounds. Yet background influences everyone's thinking. Thus, there is a natural opposition in Congress, because of its composition, to labor goals. Also, party professionals and leaders really select the candidates, and money is a controlling factor in politics. Those who control the financial purse help to name the candidates. Without group money, the goals of labor are lost.

Another important necessity for union leaders and members to participate in politics is the manner in which a newspaper can assassinate a candidate, a labor union or leader, or even a political party, whose views or platforms coincides with that of the unions or wage-earners. The vast number of newspaper clippings of stories concerning the petitioners over a three-year period which were produced on the pre-trial motions in the instant case clearly indicate how that can occur. Although most newspapers claim political independence, they usually back candidates unfriendly to labor and labor causes.

We submit that newspaper coverage has been unfair to unions by emphasizing strikes, violence, featherbedding, jurisdictional disputes, secondary boycotts, racial discrimination, and misdeeds by a few union officials. On the other hand, constructive union activity, such as that provided by the Voluntary Fund, is ignored by newspapers. To counteract the attitudes of the press, union leaders must enter the political field to protect the interests and goals of union members, and must spend group money on candidates and causes favorable to them.

In addition, newspapers are subsidized by paying less-than-cost postal rates. A few newspaper chains receive as much postal subsidization as major political parties

receive in contributions. Since most major newspapers oppose candidates favorable to unions, at the best unions are not at a great disadvantage. Kovorsky, **Unions and Federal Elections**, 12 St. Louis Univ. Law J. 358, 362-363 (1968).

It is for these reasons, and many more, that Congress in enacting Section 610, protected the right of unions and union members to make political contributions and expenditures by permitting them to form parallel political organizations to the Union itself for the purpose of obtaining funds by direct voluntary contributions from members, and thereby permitting labor people to pool their financial resources and utilize them for political activity, expenditures and contributions, through the regular leaders of their union while at the same time protecting the dues of a possible dissenting minority.[17]

Absent the contention that there was some evidence that some few contributions were made involuntarily (which we deny), all the facts proved showed the Voluntary Political Fund here involved to fall within the conduct which Congress intended indeed to affirmatively approve. The facts heretofore referred to upon which the Government relied at the trial in their requested instruction were either intended by Congress to be permissible or wholly immaterial to Section 610. In addition, not only were the contributors to the Voluntary Fund in the instant case fully aware that their donations were to be used for political purposes, but there really was no evidence that there was any minority among them. The one witness who said he was a Republican testified that he

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[17] In its Brief in Opposition to the Petition for the Writ of Certiorari filed in this Court, the Government concedes, we submit, that that is this case (p. 13): "Thus, although most workers may have willingly made their payments to the Fund, the evidence plainly showed strong institutional pressure by the Union for them to do so, as well as intimate union interconnection with the establishment and administration of the Fund."

had always refused to contribute to the Voluntary Fund (Tr. 1607-8; A. 869). Not even Copeland and Hendrickson claimed that they ever contributed any money to the Fund against their wishes. If that be the purport of Baker's testimony, he clearly testified that he derived his fears which impelled him to contribute solely from rumor, without conveying them to petitioners.

But in any event, assuming that there was some evidence of compulsion, that fact cannot, we submit, convert the monies of the separate Voluntary Fund into union ownership. If so, a corporation would be guilty of making a political contribution if it coerced an officer of the company into making a direct political contribution from his own personal assets, or such a contribution indirectly through some political committee in which some other officer of the corporation might head or participate in. Further, such corporation would also be guilty of making a political contribution if it induced a supplier into making such a political contribution by threats of boycott.

It seems hardly necessary to remind this Court that criminal statutes are strictly construed (**F.C.C. v. American Broadcasting Company**, 374 U.S. 284, 74 S. Ct. 593 (1954); **Smith v. United States**, 360 U.S. 1, 79 S. Ct. 991 (1959); and are never expanded to ensnarl those whose conduct is not clearly declared a crime by the statute.

II

The District Court Prejudicially Erred in Instructing the Jury That It Could Find the Defendants Guilty of Conspiring to Violate Section 610 Even if It Believed That All of the Contributions to the Separate Voluntary Political Fund (From Which All the Political Contributions Were Made) Were Voluntarily Made to the Fund.

Of course, the money contributed to the candidates was in no real or legal sense the money of Local 562. Con-

fronted with the legislative history, that Congress intended to sanction some such Union Political Fund with, we submit, "an intimate Union interconnection with the establishment and administration of the Fund" (Gov't. Br. in Op., p. 13), the Government was confronted with the task of proving somehow that the petitioners had done something to transfer ownership of the monies used for the political contributions from the Fund to the Local—something more than the Government simply asserting that it was a device to evade Section 610. The allegation in the indictment (Paragraph 10) that the Fund was established and maintained for the purpose of concealing that the Local was making political contributions is almost a fraudulent statement by the Government itself, in view of the fact that the Fund had existed for 20 years with full Governmental and public attention and knowledge in minute detail, with Government officials repeatedly continuing to accept contributions therefrom.[18]

It seems to us that what the Government has done ever since this case has reached the appellate stage is talk out of both corners of its mouth on the issue of voluntariness. If the Government concedes, as it ultimately did in the Court of Appeals, that (to quote Judge Heaney citation):

> "The government acknowledges in its brief that a union acting through its officers, agents and members may form a political organization parallel to the union and use union personnel to solicit and spend direct voluntary contributions for federal elections. It concedes that COPE and countless other political action groups have been so organized and operated.[19]

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[18] The statute makes it the same crime to receive as to give.

[19] We have already pointed out that at the trial the Government undertook to submit the case to the jury on exactly the opposite of this proposition, that is, that the jury could find the defendants guilty if it found that all contributions to the Fund were voluntary, and asking the jury to convict on specified facts that established only the quoted proposition (supra, pp. 52-4).

there remains only the issue of voluntariness which could conceivably convert the Fund's money into union ownership, and be the source of a conspiratorial artifice and device.

Not only did the Government, in the Court of Appeals, speak with a forked tongue on this issue, but the Government continues to do so here. It stated in its Brief in Opposition in this Court at p. 13:

> "* * * Thus, although most workers may have **willingly** made their payment to the Fund, the evidence plainly showed strong institutional **pressure**, by the Union for them to do so * * * This case therefore does not involve a **voluntary** organization * * *"[20] (Emphasis added.)

Clearly Congress intended that there could be "intimate Union interconnection with the establishment and administration of a [Political] Fund;" which was the only thing proved.

Indeed, we believe that Congress even intended to permit (much less prohibit) "institutional pressure by the Union" for workers to contribute to a political Fund, so long as such workers "willingly made their payments to the Fund." We deem it well known that few donations (even to the United Fund or March of Dimes) are spontaneous, which the Government now claims is necessary here. (See Govt. Br. in Op., p. 12.) Most donations are preceded with "strong institutional pressure." Even if it were the law, that all political contributions by Union men must be strictly spontaneous and free from any pressure, the court did not even tell the jury that it must find "strong institutional pressure" to convert the Po-

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[20] In this quote, the Government coupled "strong institutional pressure" only with permissible "intimate union interconnection" of the Fund, not "apart from the Union" in concluding that the Fund was an involuntary organization and a claimed violation of the statute.

litical Fund into Union money. Seven instructions on voluntariness were offered by the petitioners and all rejected by the Court (Def. Refused Ins. Nos. S, T, Z, AA, BB, VV, and YY):[21] Instead the Court instructed flatly, at the Government's request, that the "fact that the payments into the Fund may have been made voluntarily by

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[21] "The Court instructs the jury that unless you find beyond a reasonable doubt that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 involuntarily, you must find the defendants not guilty" (Tr. 1964-5; A. 1096).

"It is the position of the defendants that they did not conspire to violate any law of the United States. It is further their position that the Political, Education, Legislative, Charity and Defense Fund was a voluntary fund created by certain Union members of Local 562, after seeking advice of counsel; that the fund was created for political, educational, legislative, charity and defense purposes, and for the promotion of the general welfare of all contributors to the fund; that it was a fund separate and apart from Local 562; and that the contributions to the fund were voluntary. In this connection, the Court instructs the jury, that if you find that the Government has failed to prove beyond a reasonable doubt that contributions were made to the fund involuntarily, you must find the defendants not guilty" (Tr. 1965; A. 1096-97).

"The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits labor union money from being used for such purposes. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense fund were made by members of Local 562 voluntarily and did not constitute the payment of union dues or labor union money, you must find the defendants not guilty" (Tr. 1967; A. 1097).

"The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for political office. The law merely prohibits union dues or assessments from being used for such purposes. Therefore if you find that contributions made to the Political Educational Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and did not constitute the payment of union dues or assessments, you must find the defendants not guilty.

"The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collec-

some or even all of the contributors does not, of itself, mean that the money so paid into the fund was not union money."

Whether or not there may be situations where this proposition might be true (such as outright general unlimited gifts to the union or money accepted directly into the Union treasury,[22] or money embezzled by the union

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tion of money to be used for making contributions to candidates for federal political office. The law merely prohibits money of a labor union from being used for such purposes. In this connection, money contributed by members of a labor union, voluntarily, for the purpose of being used for political purposes with knowledge of such purpose is not money of a labor union. Therefore, if you find that contributions made to the Political Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and that they were made by the members for political purposes then you must find the defendants not guilty" (Tr. 1967-68; A. 1097-98).

"The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits labor union money from being used for such purposes. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 and did not constitute the payment of union dues or labor union money, you must find the defendants not guilty" (Tr. 1977-8; A. 1099).

"The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for federal political office. The law merely prohibits money of a labor union from being used for such purposes. In this connection, money contributed by members of a labor union, for the purpose of being used for political purposes, with knowledge of such purpose is not money of a labor union. Therefore, if you find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 and that they were made by the members for political purposes, then you must find the defendants not guilty" (Tr. 1979; A. 1099-1100).

[22] In an Amicus Curiae Brief filed in the Court of Appeals by the American Federation of Labor and Congress of Industrial Organizations it is stated (at p. ii): that "many labor unions

from the Fund, the issue of voluntariness was the only one proved here by which it could possibly be inferred that the monies of the separate knowledgable Political Fund were converted into union money, with the consequences that the political contributions were made by

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have set up political organizations as an integral subdivision of the union itself. These political arms of organized labor serve a dual function: utilizing dues moneys, they engage in educational activity directed at the union's members, and utilizing voluntary donations, which are kept in separate segregated funds, they channel the flow of contributions and expenditures in connection with federal election." Thus, it is seen these voluntary donations are far more identified with the union than was the Voluntary Fund in the instant case. This is probably due to the fact that the Voluntary Fund here was organized pursuant to the carefully considered advice of competent labor lawyers."

In that Brief, the Federation argued that the voluntariness alone is enough to avoid (not a device to evade) the proscriptions of Section 610, and there is much in the legislative history and judicial pronouncements to support this broad proposition. Although Senator Taft frequently spoke of a separate fund, there is abundant evidence that Senator Taft felt that Union funds themselves could be used for political purposes provided their source were not involuntary union dues. Thus, he repeatedly stated that a union itself could publish a political newspaper provided it was not financed by compelled union dues (93 Cong. Record 6437-6441, 6448-6449, 6523-6524). Although he maintained that money received by the Union itself for such purpose by subscriptions, advertisements or gifts did not constitute union funds within the meaning of the statute, his only explanation for such logic was that such monies were not compelled from union members and did not constitute union dues. But no one doubted that a union could establish a political organization for the purpose of receiving ear-marked political monies directly from union members, as was done by Local 562.

There is also some support for this proposition in the judicial decisions and pronouncements. Two cases have held that there was no violation of Section 610, even when Union dues were used, on some theory of voluntariness: **United States v. Warehouse and Distribution Workers Union Local 688**, 47 L.R.R.M. 2005 (E. D. Mo.); **United States v. Anchorage Central Labor Counsel**, 193 F. Supp. 504 (D. Alaska). Also see statements in **United States v. Congress of Industrial Organizations**, 335 U.S. 106, 111, 106, 123; **United States v. Automobile Workers of America** (UAW-CIO), 352 U.S. 567, 584; Cf. **Machinist v. Street**, 367 U.S. 740, 81 S. Ct. 1784 (1961).

the union itself. If there was enough evidence in this case to submit it to the jury at all, the issue of voluntariness was the crucial issue and the essence of the Government's case (see petitioner's objection, Tr. 1956-7; A. 1092-93).

Though redundant, we again quote briefly from Senator Taft:

> ". . . Such an association [National Association of Manufacturers] could receive money by direct contributions from individual members, just as the CIO-PAC can properly operate as a political organization raising its funds from individual members. (93 Con. Rec. 6438.)"
>
> "If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that." (93 Cong. Record 6439.)"
>
> "The **union** can separate the payment of dues from the payment for a newspaper if its members are willing to do so, that is, if the members are willing to subscribe to that kind of newspaper. I presume the members would be willing to do so. A **union** can publish such a newspaper, **or UNIONS can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions,** just so long as members of the union **know** what they are contributing to, and the **dues** which they pay into the union treasury **are not** used for such a purpose." (93 Cong. Record 6440.);
>
> "If [union members] are **asked** to contribute directly to the support of a newspaper or to the support of a labor political organization they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to

such matters. But the prohibition is against labor unions using their members' dues for political purposes, . . . and perhaps in violation of the wishes of many of its [members]." 93 Cong. Rec. 6440. (All emphasis added.)

Though we have hesitated to do so, it seems to us altogether proper and appropriate to ask both the Government and this Court (which we hope is not considered impertinent) the following question: If the jury had found all the factual issues which the District Court asked the jury to consider in determining whether the fund was in fact a fund of the union in favor of the Government (except voluntariness and separateness), would the Government have proved a device to evade the sanctions of Section 610, rather than a procedure to avoid its proscriptions? These factual issues are set forth heretofore (supra, pp. 52-5), and are accurately summed up by the Government in its Brief in opposition (p. 13) as an "intimate union interconnection with the establishment and administration of the Fund." That the monies of the Fund were kept separate, and never commingled with the Union funds, was proved by the Government, as well as the defense. Indeed, the indictment so alleges.

If the answer to the above question is negative, as we believe it must be, then it seems apparent that the issue of voluntariness was critical, and the court erred in instructing the jury that "the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money" (Tr. 2,075; A. 1116). We also believe it is apparent that the Court equally erred in refusing all of petitioners' requested instructions on this issue.

If this Fund can be found violative of the statute (by the simple device of calling it an artifice to conceal), with-

out the jury determining the issue of voluntariness, all labor funds in America violate the statute, as well as many corporate funds, and other procedures for political contribution by corporate officers and wealthy individuals. We do not believe the Government can dispute this.

Shaved of compulsion, as the instructions did, the Fund becomes as commonplace as the poltical scene itself. If affirmed, this case could well bring about a complete change in our traditional system of Government based on political parties. It could indeed mean a surrender of our political system to those who are willing to run the risk that their supporters will be victorious; and as victors, engage in selective prosecution of only those who supported the politically defeated, whether by contribution or expenditures.

A Prelude to the Constitutional Issues

Although all the constitutional issues are interlated, they are not identical, and each will be considered and argued separately in this Brief. It seems appropriate, however, to state before beginning separate argument of each of them, that Section 610 as construed and applied below establishes a most dangerous departure from the American tradition of group political activity. As Mr. Justice Rutledge stated with respect to Section 610 in the CIO case, supra, 335 U.S. at 147, "the accepted principal of majority rule which has become a bulwark, indeed perhaps the leading characteristic, of collective activities is rejected in favor of atomized individual rule and action in matters of political advocacy . . ." Manifestly, a nation cannot maintain effective democratic government if every inaffluent individual voter must act alone. It is only through association in groups that he can further his general economic interests and hope to achieve any political effectiveness in our complex modern society. As this Court said in **Sweezy v. New Hampshire**, 354 U.S. 234, at 250:

"Exercise of these basic freedoms [of political expression] in America has traditionally been through the media of political associations." Indeed, it is submitted that our long tradition of group political activity embodies a fundamental constitutional right in and of itself. Congressional power to guard the free exercise of the civil rights of voters cannot be converted into Congressional power substantially to destroy or impair them. Yet, this is the immediate effect of this statute as construed and applied on the freedom of working men and women to protect their interests as union members. It deprives union members of their only organized means of protection of their interests in many of the most important political and economic issues of the day. It reduces the governmental role of common men, who still are so numerous, to scattered ineffectiveness, while at the same time enhancing the power to govern of those who own or control wealth. Contrary to the hopes and desires of those in Congress who enacted Section 610, it is not, as construed and applied in this case, a means of preserving government by and for the people.

III

Section 610, Title 18, U. S. C., as construed and applied by the Courts below, abridges the petitioners' rights as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First Amendment of the Constitution of the United States.

In disposing of this case, the courts below construed Section 610 as prohibiting officers, agents and members of a union from forming a parallel political organization and utilizing the union leaders, officers and agents in such political organization, in the obtaining, pooling and expending of direct voluntary contributions for political purposes.

If the convictions now be affirmed, such affirmance can only be viewed by the cautiously law-abiding citizens as standing for that proposition.

Unless the legislative history of Section 610 and judicial precedents are appraised to permit labor people to pool their financial resources and utilize them for political activity, expenditures and contributions, through the regular leaders of their union, in separate organization parallel to the union, the statute would clearly be unconstitutional. Section 610 has been saved once only by a narrow construction of the word "expenditure" with four Supreme Court Justices believing it to be unconstitutional. **United States v. CIO**, 335 U.S. 106. On a second occasion, three Justices held it to be unconstitutional, with the majority not resolving that issue. **United States v. UAW**, 352 U. S. 567.

In the **CIO** case, the Supreme Court said (335 U. S. at 120-21) "it is clear that Congress was keenly aware of the constitutional limitations on legislation and of the danger of the invalidation by the courts of any enactment that threatened abridgement of the freedoms of the First Amendment. It did not want to pass any legislation that would threaten interferences with the privileges of speech or press or that would undertake to supersede the Constitution. The obligation rests also upon this Court in construing Congressional enactments to take care to interpret them so as to avoid a danger of unconstitutionality." The Supreme Court later conceded that it "strained words" to avoid the serious constitutional issue presented in the **CIO** case. **United States v. Rumely**, 345 U. S. 41, 47, 73 S. Ct. 543 (1952). The Supreme Court has consistently followed the rule that where a statute is susceptible of two constructions, one raising serious constitutional questions, and the other avoiding them, the Court's duty is to adopt the latter construction. **United States v. CIO**, *supra*, 335 U. S. at 121; **United States v. Rumely**,

supra, **Eastern R. R. Presidents Conference v. Noerr Motor Freight, Inc.**, 365 U. S. 127, 138, 81 S. Ct. 523 (1961); **Harriman v. Interstate Commerce Commission**, 211 U. S. 407, 422, 29 S. Ct. 115 (1908).

To prohibit union members from voluntarily pooling their financial resources in political association, in an organization separate from the union, through their chosen leaders, would raise more serious constitutional doubts than the political expenditure made by the union itself in the CIO case. First Amendment rights enjoy a preferred status in our constitutional scheme. **New York Times Co. v. Sullivan**, 376 U. S. 254, 269-270, 84 S. Ct. 710 (1964); **Sherbert v. Verner**, 374 U. S. 398, 83 S. Ct. 1790 (1963); **Lamont v. Postmaster General**, 381 U. S. 301, 85 S. Ct. 1493 (1965); **United States v. Carolene Products Company**, 304 U. S. 144, 58 S. Ct. 778 (1938). The most fundamental of all such First Amendment rights is the right of political association and expression. **Sweezy v. New Hampshire**, 354 U. S. 234, 250, 77 S. Ct. 1203 (1957); **N. A. A. C. P. v. Button**, 371 U. S. 415, 430, 83 S. Ct. 328 (1963); **DeJonge v. Oregon**, 299 U. S. 353, 57 S. Ct. 255 (1937); **Machinist v. Street**, 367 U. S. 740, 812-816, 81 S. Ct. 1784 (Frankfurter dissenting) (1961); **United States v. CIO**, *supra*, 335 U. S. at 144 (Rutledge, J., concurring); **Stromberg v. California**, 283 U. S. 359, 369, 51 S. Ct. 532 (1931); **N. A. A. C. P. v. Alabama**, 357 U. S. 449, 78 S. Ct. 1163 (1958); **Watkins v. United States**, 354 U. S. 178, 77 S. Ct. 1173 (1957); **N. A. A. C. P. v. Alabama ex rel. Flowers**, 377 U. S. 288, 84 S. Ct. 1302 (1964); **Thomas v. Collins**, 323 U. S. 516, 65 S. Ct. 315 (1945); **Railroad Trainmen v. Virginia Bar**, 377 U. S. 1, 84 S. Ct. 1113 (1964); **United Mine Workers v. Illinois Bar Ass'n**, 389 U. S. 217, 88 S. Ct. 353 (1967). In **Sweezy** the Court said 354 U. S. at 250):

> "Our form of government is built on the premise that every citizen shall have the right to engage in politi-

cal expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations."

Restraints on freedom of association in the area of political discussion where free political expression is of the greatest importance would result in evils far more serious than any which the restraints seek to prevent.

The Supreme Court has recognized that it is precisely because free political discussion is the prerequisite to effective democratic change that it must receive the highest degree of protection.[23] In **Stromberg v. California,** 283 U. S. 359, 369, 51 S. Ct. 532 (1931), Mr. Chief Justice Hughes stated:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."

This same point was stressed in **DeJonge v. Oregon,** 299 U. S. 353, 365, 57 S. Ct. 255 (1937), where the Court said:

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[23] The central theme which appears to underlie the historic decisions of the Supreme Court in the area of First Amendment rights has been, from the first, the protection afforded the democratic process by the opportunity for free political discussion. Thus, in **Whitney v. California,** 274 U. S. 357, 375, 47 S. Ct. 641 (1927), Mr. Justice Brandeis, concurring for himself and Mr. Justice Holmes, foreshadowed the later decisions of the Supreme Court with the statement "that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth . . . that public discussion is a political duty . . . [is] a fundamental principle of the American government."

". . . the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Because of the deep concern for preserving the freedom of political association and expression as the basis for democratic self-government, statutes which restrict that freedom are subject to the most searching scrutiny. The cases indicate that, in fact, there must be clear affirmative support of a deprivation of these rights, and that this rule amounts almost to a presumption in favor of rights guaranteed by the First Amendment. **Thomas v. Collins**, 323 U.S. 516, 529, 530, 65 S. Ct. 315 (1945); **West Virginia State Board v. Barnette**, 319 U.S. 624, 639, 63 S. Ct. 1178 (1943); **Thornhill v. Alabama**, 310 U. S. 88, 95, 96, 60 S. Ct. 736 (1940); **Cantwell v. Connecticut**, 310 U. S. 296, 311, 60 S. Ct. 900 (1940); **Bridges v. California**, 314 U. S. 252, 262, 263, 62 S. Ct. 190 (1941).

From this premise, that "political association" is a basic freedom protected by the First Amendment, the Supreme Court has found other group activities to be a form of **political** association. Thus, the N. A. A. C. P. Legal Defense and Educational Fund, Inc. was held to be a form of Political Association protected by the First Amendment (as incorporated in the Fourteenth Amendment) against state claims that it constituted solicitation of legal business. **N. A. A. C. P. v. Button**, *supra*, 371 U. S. at 429. "In the context of NAACP objectives, litigation is * * * a means for achieving the lawful objectives of equality of treatment by all government, federal,

state and local, for the members of the Negro community in this country. It is thus a form of political expression." And it "may be the most effective form of political association." (p. 431).

Likewise, other forms of orderly group activity to "achieve legitimate political ends" have been held to be protected by the First Amendment against regulatory assaults by government: to freely associate, without governmental regulation or compelled disclosure, for the advancement of beliefs and ideas [**N. A. A. C. P. v. Alabama**, 357 U. S. 449, 78 S. Ct. 1163 (1958); **N. A. A. C. P. v. Alabama ex rel. Flowers**, 377 U. S. 288, 84 S. Ct. 1302 (1964)]; to organize workers into a union [**Thomas v. Collins**, 323 U. S. 516, 65 S. Ct. 315 (1945)]; to have minority political associations without compelled disclosure thereof (**Sweezy v. New Hampshire**, *supra*); to furnish legal services to union members by the union (**Railroad Trainmen v. Virginia Bar**, *supra*; **UMW v. Illinois Bar Ass'n**, *supra*); to assemble in public for peaceful political action and discussion of minority views [**DeJonge v. Oregon**, *supra*]; to peacefully picket in public places [**Thornhill v. Alabama**, 310 U. S. 88, 60 S. Ct. 736 (1940); **Amalgamated Food Employees Local 590 v. Logan Valley Plaza, Inc.**, 391 U. S. 308, 313, 88 S. Ct. 1601 (1968)].

In argument I, supra, pp. 64-5, we discussed the necessity of union members to participate in politics through the pooling of their joint resources. The Supreme Court has acknowledged this need in **Machinist v. Street**, 367 U. S. 740, 81 S. Ct. 1784 (1961), in holding that railroad unions, where there is a compelled union shop, could spend union dues for political purposes subject to refunding a proportionate share of the dues to objecting members of the union. Also in **Eastern R. R. Presidents Conference v. Noerr Motor Freight, Inc.**, 365

U. S. 127, 138, 81 S. Ct. 523 (1961), the Supreme Court held that the anti-trust laws did not apply to concerted corporate political action, stating that if the statute were construed to cover political expression through association, serious constitutional issues would be raised.

If the statute is construed to cover the facts alleged in this indictment, as shown by the evidence and as found by the jury under the instructions, it will achieve the elimination of individual members of organized labor from participation in federal elections and to that extent from public affairs. Moreover, this elimination will directly restrain and equally impair the correlative right of the public to hear and be informed through the exercise of labor's rights under the First Amendment. "The right of freedom of speech and press . . . embraces the right to distribute literature . . . and necessarily protects the right to receive it." **Martin v. City of Struthers**, 319 U. S. 141, 143, 63 S. Ct. 862 (1943).

The statute as construed denies individuals rights of voluntary association for it forbids working men to associate and act through their labor leaders in the political field to protect their collective rights. This includes both their rights as union members and the rights of the union which they have joined. Even though the choice of candidates may determine whether those rights will be secured or destroyed, the statute as construed, prohibits union members from protecting and advancing those rights.

Such a candidate may favor repeal of the Taft-Hartley Act, outlawing state Right-to-work laws, higher minimum wages and outlawing discrimination in employment. Yet the Court below held that union members, even through a parallel political organization may not spend jointly a penny in support of such a candidate. The opposing candidate may favor applying the anti-trust laws to unions, a Federal Right-to-Work law, and even a law to prohibit

entirely political activities by Union members. The union members, even through a parallel political organization, may not spend jointly a penny to express its opposition to such a candidate, whether such opposition be by either majority or unanimous action of the members.

From the first, there has been no line of demarcation between the bargaining, educational and political activities of union members. There is a tradition of over 100 years of union political activity in this country.[24] As the Federal Government has increasingly legislated in the field of union activity as well as economic matters, such as wages, hours and conditions of employment which are of the most immediate concern to laboring men both as workers and as union members, the necessity for labor union political activity has correspondingly increased. Today the passage or defeat of any number of bills affecting working men may be of as great importance to union members as even the collective bargaining process itself. Indeed, the very growth of the welfare of working men in this country to their present stature was achieved, at least in part through the pattern of federal labor laws in the 1930s. On the other hand, the restrictions in effect after 1947 have materially curbed further extension of that achievement.

Under these circumstances, the election of candidates to Congress favorable or unfavorable to the interest of laboring men is far from tangential or irrelevant to the purpose of labor union members. Political action, and the public presentation of the union members' views as to who best represents the interest of working men and their associations, is essential to the preservation and advance-

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[24] At the very beginning of the labor movement in the United States unions employed political action as a primary means of advancing the interests of their members. See Ch. III of **Labor in America**, by Foster Rhea Dulles (1949). Labor was emancipated mostly by political action. Ibid., Ch. XI, The Progressive Era; Ch. XVII, Labor and Politics.

ment of their common interests. Political representation of union members' interests as union members and workers is at the very center of the purpose for which labor unions are formed and maintained.

Our political tradition calls for a constantly increasing participation by citizens in discussions leading to the choice of candidates. It also calls for an increasing attempt to reach more citizens with such discussions of issues and candidates. But this statute as construed deprives the petitioner union and its members of this participation. Indeed, the deprivation is so extensive and complete that the statute as construed cannot be viewed as a regulatory device. It amounts to a complete prohibition of group political association by labor union members.

In conclusion, we respectfully submit that if Section 610 is construed to apply to the Voluntary Fund, the statute not only would raise serious constitutional issues, but would clearly be unconstitutional as limiting the First Amendment rights of union members to associate in political expression.

Indeed, we believe that the First Amendment would be violated if Section 610 were construed to apply where voluntary contributions are placed in a union's special bank account, earmarked for political expenditure and there is no **separate** Fund as there was in the instant case. Thus, the controlling factors are that the source of the funds is voluntary contributions by persons who knew the purpose for which the funds will be used, i.e., political expenditures. Of course, in the instant case, the contributions were made to a separate and distinct fund. Query what else petitioners and their attorneys could have done so that the workers could continue to associate in political activities, without their leaders being prosecuted. This question has never been answered by the government, the trial court nor in the majority opinions rendered by the Appellate Court.

IV

18 U.S.C., §610, as Construed and Applied by the Court Below, and on Its Face, Is So Vague, Indefinite and Uncertain as to Deprive Petitioners' of Due Process of Law and Fails to Provide a Reasonably Ascertainable Standard of Guilt in Violation of the Fifth and Sixth Amendments.

On numerous occasions, this Court has declared statutes void as unconstitutionally vague. **United States v. L. Cohen Grocery Co.**, 255 U.S. 81, 41 S. Ct. 298 (1921); **United States v. Cardiff**, 344 U.S. 174, 73 S. Ct. 189 (1952); **Rabeck v. New York**, 391 U.S. 462, 88 S. Ct. 1716 (1968); **Baggett v. Bullitt**, 377 U.S. 360, 84 S. Ct. 1316 (1964); **Connally v. General Construction Co.**, 269 U.S. 385, 46 S. Ct. 126 (1926); **Herndon v. Lowry**, 301 U.S. 242, 57 S. Ct. 732 (1937); **Lanzetta v. New Jersey**, 306 U.S. 451, 59 S. Ct. 618 (1939); **Stromberg v. California**, 283 U.S. 359, 51 S. Ct. 532 (1931); **Winters v. New York**, 333 U.S. 507, 68 S. Ct. 665 (1948); **Palmer v. City of Euclid**, ... U.S. ..., 91 S. Ct. 1563 (1971). The vices inherent in any indefinite enactment imposing criminal sanctions are the dangers of unfair prosecution, because there is no warning of what is criminally proscribed, and the potential deterrence of constitutionally protected conduct, since even legitimate activity will not be undertaken for fear of prosecution. **Cramp v. Board of Pub. Instruction of Orange County, Fla.**, 368 U.S. 278, 283, 82 S. Ct. 275 (1961). Yet these risks will more likely occur, if courts by their interpretation of a statute are permitted to expand language beyond the confines of previous legislative history and judicial precedent. See, **Bouie v. City of Columbia**, 378 U.S. 347, 352, 84 S. Ct. 1697 (1964); **Pierce v. United States**, 314 U.S. 306, 311, 62 S. Ct. 237 (1941); **Wright v. Georgia**, 373 U.S. 284, 83 S. Ct. 1240 (1963); **Smith v. Cahoon**, 283 U.S. 553, 564-65, 51 S. Ct. 582 (1931); **McBoyle v. United States**, 283 U.S. 2527, 51 S. Ct. 340 (1931); Freud, **The**

Supreme Court and Civil Liberties, 4 Vand. L. Rev. 533, 541 (1941); Note, **The Void for Vagueness Doctrine**, 109 U. Pa. L. Rev. 67, 73-74, N. 3 (1960).

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The instant case vividly portrays section 610's constitutional infirmity.

Based on the legislative history and all its prior judicial decisions concerning Section 610, the United States District Court for the Eastern District of Missouri in 1960 held that Section 610 did not proscribe contributions to federal candidates, even where such contributions are made out of union funds, so long as the funds are **voluntarily designated for political purposes. United States v. Teamsters Local 688**, 41 L. C. 23,380, 47 L.R.R.M. 2005 (E.D. Mo. 1960). The court stated:

> "To sum up:
>
> (1) I hold that contributions or expenditures in connection with the election of Federal candidates by a labor organization, consented to by officers of such an organization, are not prohibited by Section 610, Title 18, United States Code, where such contributions are made from funds voluntarily designated for such purpose by all or a part of the individual members of such labor organization, so long as there is a *bona fide* accounting of such funds, and so long as the amounts of such contributions or expenditures do not exceed the voluntary funds so designated." 41 L. C. at 23,381.

This then was the state of the law,[25] when in late 1962, the organizers of the Pipefitters' Voluntary Fund con-

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[25] Also decided prior to the creation of the Fund in its present form was **United States v. Anchorage Cent. Labor Council**, 193 F.Supp. 504 (D. Alaska 1961), which held no violation of Section 610 by an association of local unions expending funds

sulted Harry Craig, the union's attorney, to advise them about the establishment and administration of a fund which would meet the requirements of law (Tr. 1788, 1887; A. 986, 1052). Mr. Craig, who also represented Teamsters Local 688, was thoroughly familiar with Section 610, as he had set up the aforementioned Teamster Fund, which had just been successfully upheld in court (Tr. 1890; A. 1054).[26] Unlike the Teamsters' plan, Mr. Craig (and other lawyers) recommended the establishment of the Pipefitters' Voluntary Fund in which the contributions would not be collected by checkoff, the contributions would be individually made by the members, pledge cards would be obtained expressing the contributors' intention to contribute voluntarily, and the monies of the voluntary fund would be segregated and kept apart from the funds of Local 562 (Tr. 1847-49, 1970-71, 1898-1900; A. 1026-27, 1059-61).[27] For a more detailed discussion of the legal

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for federal political purposes out of the association's general fund, because the funds were voluntarily contributed by each member local. Both **United States v. Teamsters Local 688**, *supra*, and **United States v. Anchorage Cent. Labor Council**, *supra*, are stronger cases for violation of Section 610 than the case at bar.

[26] Since **United States v. Teamsters Local 688**, *supra*, was not appealed by the government, it was a final decision presumably binding on any prosecution in the United States District Court for the Eastern District of Missouri, Eastern Division. Since Attorney Craig and Local 562 were both located in that district, Craig, therefore, gave great weight to the Teamsters' decision in establishing the Pipefitters' Voluntary Fund.

[27] Certainly, the establishment of the Pipefitters' Voluntary Fund in this manner is more beyond the scope of Section 610 than the Teamsters' plan for the following reasons: (1) The contributions to the Pipefitters' Voluntary Fund are not deducted automatically by the employer as part of dues like the Teamsters' plan, but rather are given by the individual members directly; (2) at no time are the pipefitters' contributions commingled with dues, whereas under the Teamsters' plan, the contributions are part of dues or at least commingled with dues at checkoff, depending upon whether those contributing have more checked off than non-contributors; and (3) the voluntary contribution under the Teamsters' plan is integrated into the collective bargaining process.

advice given with respect to the establishment of the Pipefitters Voluntary Fund, see the Statement of Facts, *supra*, at pp. 16-23.

Subsequently, the Pipefitters' Voluntary Fund was formed, administered and maintained in accordance with these recommendations of the lawyers, which recommendations were believed to be in keeping with the strictest requirements of Section 610. See, Statement of Facts, *supra*, at pp. 24-29 with respect to the management and operation of the Pipefitters Voluntary Fund.

Nevertheless, the government throughout the course of these proceedings departed from the aforementioned traditional concept of Section 610. The instant case was brought, tried and submitted, not on the theory that the contributions by members of Local 562 were **involuntarily made**, but rather on the basis that, even if all of the contributions to the Fund were voluntary, still the Fund was violative of Section 610. Thus, nowhere in the indictment was it alleged that the union members did not voluntarily contribute to the Fund or that union members were coerced into contributing by making the contributions to the political fund a condition of employment. Instead, it was alleged that the Pipefitters' Voluntary Fund had "the appearance of being a wholly independent entity, separate and apart from Local 562" whereas in reality it was not (Indictment, paragraph 10). See Argument I, *supra*, at pp. 51-69 concerning error in failing to dismiss the indictment and in overruling petitioners' motions for judgment of acquittal.

Furthermore, the district court instructed the jury that it could find that the Pipefitters' Voluntary Fund was a union fund by all the facts and circumstances in evidence. The fact that the contributions were voluntary was only one of many circumstances submitted for the jury's consideration in determining whether a violation of Section

610 had occurred (Tr. 2070-73; A. 1112-15). See the Statement of Facts and Argument II, *supra*, at pp. 42, 69-78, with respect to error in the district court's instructions.

The majority opinion of the Court below affirmed and approved the prosecution's theory, despite the contrary legislative history and judicial authority. **United States v. Pipefitters Local Union No. 562**, 434 F.2d 1116 (1970). The problem, of course, with this interpretation of section 610 is that it is utterly devoid of any standards or guidelines which provide advance notice or warning as to what conduct is prohibited. See, **Note**, 49 Texas L. Rev. 384, 389-91 (1971); Chang, **Labor Political Action and the Taft-Hartley Act**, 33 Neb. L. Rev. 554, 570 (1954); Lambert, **Corporate Political Spending and Campaign Finance**, 40 N.Y.U.L.Rev. 1033, 1063-64 (1963). Certainly, the decisions of the Courts below hold that voluntariness of the contributions attaches no significance, and, since the fund in the instant case was kept in a separate bank account (Tr. 184, 1489-90; A. 62-3, 791-92), apparently the physical segregation of the fund is not important either. If, as the Eighth Circuit now seemingly holds, any fact or circumstance—which literally involves countless thousands of conceivable combinations—can be placed into evidence to establish that a voluntary political fund is a union fund, who can be assured at the time such a fund is established, that he will not at a later date be the subject of prosecution?

The far-reaching ramifications of the courts' decisions are heightened by the well known fact that all international labor unions, most local unions and many conglomerate corporations, have political organizations or funds similar to, or even less designed to avoid the proscriptions of Section 610 than the Pipefitters' Voluntary Fund. Alexander, **Financing the 1960 Election** 42 (1962), **Financing the 1964 Election**, 64 (1970) (contained in **Studies in Money in Politics, 2 Vols**); Clover, **Political Contributions by Labor Unions**, 40 Tex.L.Rev. 665 (1962); Alexander &

Meyers, **The Switch in Campaign Giving**, Fortune, Nov. 1965, at 216.[28] And since Section 610 applies to the receiver as well as the contributor, it may be reasonably expected, therefore, that a myriad of prosecutions may some day be heaped upon politicians opposed to those in public office in the hope that juries will somehow be able to ferret out any and all circumstances in evidence to determine violations of Section 610.[29] Under such a situation, seemingly identical facts will give rise to inconsistent verdicts, based upon the mere whim and conjecture of the jury. The subjective attitude of the jury, rather than the express objective language of the statute, will be the controlling factor for all practical purposes. Our prisons may become filled with innocent victims, who, as the

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[28] Some of the political funds of labor are referred to in the evidence. These include: COPE, Trainmen's Political Educational League; Amalgamated Meatcutters and Butcher Workmen of North America, COPE, Int'l Ladies Garment Workers Union, 1964 Campaign Committee, New York, N.Y.; State A.F.L.C.I.O. COPE; G. B. B. A. Political Education League; Allied Industrial Workers Region No. 9 COPE Fund; Int'l Union of Electrical, Radio and Machine Workers—COPE Fund, Washington, D.C.; Int'l Chemical Workers Union, Akron, Ohio; Railway Clerks Political League COPE Fund; American Radio Assn. AFL-CIO United Steelworkers of America, COPE, Washington, D.C.; Oil, Chemical and Atomic Workers Int'l Union COPE Fund, Denver Colo.; Railway Labor's Political League COPE Fund, Detroit, Mich.; Nat'l U. I. U. Trades Campaign Committee, Philadelphia, Pa.; U.A. W. A.F.L.-C.I.O. Region 10, Voluntary COPE Fund, Milwaukee, Wis.; Int'l Typographical Union; Communication Workers of America (Tr. 524-27, 539, 543, 549-50, 582-83, 813-14, 818-21, 828, 840, 844, 1890; A. 409, 412-14, 1054).

Large contributions in the 1970 Congressional election came from corporation political funds interested in aerospace and defense, such as Ling Temco Vaught, McDonnell-Douglas Corporation, Northrop Aircraft Corporation, Olin Corporation and Union Oil Co. St. Louis Globe-Democrat, April 12, 1971, p. 12A.

[29] Since May, 1969, there have been at least sixteen cases of this type. **Department of Justice News Release,** June 30, 1970. Moreover, many other political funds of labor unions and corporations, although not yet under indictment, are being scrutinized for violations of Section 610.

petitioner here, are convicted upon speculation by juries given no direction, as a result of the imprecise nature of the statute.

If the present interpretation of Section 610 be allowed to remain it seems likely that the ultimate grave consequences of the statute will be some day used for political prosecution. Section 610 is now rendered capable of distortion, beyond any realm of its legislative intention, to become a trap for the knowledgeable and unwary alike. The victorious political party will have a strong weapon in its arsenal with which to prosecute officials of those union and corporate funds as well as anyone in receipt of contributions who oppose its political positions. Indeed, the instant case supports such fears; for here the petitioners did all in their power to comply with the law. They sought and obtained competent legal advice as to the method of creating and operating a separate political organization (Tr. 1791-93, 1797, 1887, 1890-96; A. 987-89, 991-92, 1052, 1054-59). Not only did the evidence show that the petitioners consciously followed this advice, but apparently the jury believed that the petitioners consciously followed such advice, since the jury expressly found that petitioners did not engage in a wilful violation of the law (Tr. 2083; A. 1125-26). Only because Section 610, as construed by the courts below, is so wrought with confusion, do petitioners stand convicted before this Court.

The admonition of Mr. Justice Rutledge in his concurring opinion in **United States v. CIO**, *supra*, at 147, 151, has come to pass:

> "Notwithstanding accepted canons of statutory construction, it certainly would be going far to expect laymen, or even lawyers, to read a statute so lacking in specificity concerning its basic criterion with any semblance of understanding of its limitations.
>
> "The lawyer might indeed read the Congressional Record and conclude that the source of the funds

used was the crux. But even he would be left in broad and deep doubt whether it would turn multitudinous situations one way or the other."

In light of Section 610's interpretation by the courts below, not only must men of common intelligence, at peril of their liberty and property, guess and speculate as to its meaning and differ as to its application, **Lanzetta v. New Jersey**, *supra*, 306 U.S. at 452, **United States v. L. Cohen Grocery Co.**, *supra*, 255 U.S. at 391, **Connally v. General Construction Co.**, *supra*, 269 U.S. at 391, but so also must scholars, lawyers and judges.[30] See **Note**, 49 Texas L. Rev. 384, 389-91 (1971).

As the matter now stands, neither union officials, their attorneys, nor persons to receive the funds will be able to predict what type of political fund will provide sanctity from prosecution. The only safe course of conduct will be for union members to undertake no political action at all and for political parties and federal campaigners to refuse expenditures and contributions in their behalf. As such, the statute, as construed by the courts, encroaches upon the fundamental freedoms of expression, assembly and petition guaranteed by the First Amendment (See Argument III, *supra*). Where a statute operates to restrain protected First Amendment freedoms, stricter standards of permissible statutory vagueness are to be applied. **N.A.A.C.P. v. Button**, 371 U.S. 415, 432, 83 S. Ct. 328 (1963); **Smith v. California**, 361 U. S. 147, 151, 80 S. Ct. 215 (1959); **Herndon v. Lowry**, *supra*; **Winters v. New**

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[30] It is significant that the three dissenting judges in the instant case, namely Judges Heaney, Lay and Bright gave Section 610 the same interpretation which the petitioners' lawyers gave it. See Appendix at pp. 1159-78. Surely, if trained federal appellate judges and experienced lawyers differ on what the statute means, can we expect union officers and officials to know when their conduct will be within the ambit of illegality and be made to suffer imprisonment for actions they believed lawful?

York, *supra*, 333 U.S. at 509-10, 517-18; **Thornhill v. Alabama**, 310 U.S. 88, 60 S. Ct. 736 (1940); **Baggett v. Bullitt**, *supra*; **Dombrowski v. Pfister**, 380 U.S. 479, 83 S. Ct. 1116 (1965); **Stromberg v. California**, *supra*, 283 U.S. 369; **Cramp v. Board of Pub. Instruction of Orange County, Fla.**, *supra*, 368 U.S. at 287. As the Supreme Court recently stated in **Ashton v. Kentucky**, 384 U.S. 195, 200, 86 S. Ct. 1407 (1966):

> "Here, as in the cases discussed above, we deal with First Amendment rights. Vague laws in any area suffer a constitutional infirmity. When First Amendment rights are involved, we look even more closely lest, under the guise of regulating conduct that is reachable by the police power, freedom of speech or of the press suffer."

See also, **United States v. CIO**, *supra*, 335 U.S. at 142 (Rutledge, J., concurring) (1948).

Yet, the interpretation given Section 610 by the courts below unnecessarily abridges First Amendment rights in achieving the legislative purpose of the statute. See e.g., **International Association of Machinists v. Street**, 367 U.S. 740, 773, 81 S. Ct. 784, 802 (1961). The government's interest in the minority union member's protection can as easily be insured under the traditional concept of treating illegal only involuntary and coercive political funds of unions. The English have accomplished what Congress in the enactment of Section 610 sought while at the same time permitting union political activity in the Trade Union Act of 1913, 2 and 3, Geo. 5, c. 30, reenacted by Trade Disputes and Trade Union Act of 1946, 9 & 10, Geo. 7, c. 52. And since Section 610 prohibits all expenditures, rather than merely excessive ones (cf. §§ 13 and 20 of the Hatch Act, 18 U.S.C., §§ 608, 609, providing for $3,000,000 limit on political committees and $5,000 limit on individuals annually), the statute's purpose of protecting the

election process from undue influence can be maintained only by a narrow construction. See **United States v. UAW**, *supra*, at 352 U.S. 596-98 (Douglas, J. dissenting); Note, 49 Texas L. Rev. 384, 390-391 (1971). To the contrary, however, the Court below has given section 610 the broadest possible meaning, totally emasculating First Amendment rights on a wholesale basis.

Our country, founded upon the precepts of due process and the fundamental freedoms of expression and assembly, can ill afford to have so vague and uncertain a legislative enactment as Section 610 is now interpreted find lodgement in our laws. At the very least, since the petitioners were fortuitously the victims of a retroactive judicial enlargement of Section 610 by the interpretation of the courts below, they should be discharged of their convictions for wilfully conspiring to violate Section 610. This Court has afforded such relief in the past. See, e.g., **James v. United States**, 366 U.S. 213, 221-22, 81 S. Ct. 1052 (1961).[31]

B.

Additionally, the statute on its face is unconstitutionally vague. In **United States v. L. Cohen Grocery Co.**, *supra*, where the Lever Act, ch. 80, § 2, 41 Stat. 297 (1919), which made it "unlawful for any person willfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" was held void for vagueness, this Court stated:

"Observe that the Section forbids no specific or definite act. It confines the subject-matter of the

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[31] Since petitioners in the instant case were charged only with conspiring to violate Section 610, their conduct had to be found wilful by the jury to be convicted. See Argument VII, *infra*. Thus the instant case is within **James v. United States**, *supra*.

investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against" (Id., 255 U.S. at 89).

See also, **Weeds, Inc. v. United States**, 255 U.S. 109, 41 S. Ct. 306 (1921), as to the same statute.

In **United States v. Cardiff**, *supra*, the Court considered § 301 (f) of the Federal Food, Drug and Cosmetic Act, 52 Stat. 1040 (1938), which prohibited "[t]he refusal to permit entry or inspection as authorized by Section 704, 52 Stat. 1057 (1938). Section 704 authorized federal officers or employees "after first making request and obtaining permission of the owner, operator, or custodian" of the plant or factory "to enter" and "to inspect" the establishment, equipment, materials and the like "at reasonable times". In holding the statute too vague to sustain a conviction for its violation, the Court declared:

> "However we read § 301 (f), we think it is not fair warning . . . to the factory manager that if he fails to give consent, he is a criminal. The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited. Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula. We cannot sanction taking a man by the heels for refusing to grant the permission which this Act on its face apparently gave him the right to withhold. That would be making an act criminal without fair and effective notice." Id. at 344 U.S. 176.

See also, **Watkins v. United States**, 354 U.S. 178, 209-16, 77 S. Ct. 1173 (1957); **Weissman v. United States**, 373 F.

2d 799 (9th Cir. 1967).[32] Section 610 on its face is equally, if not more vague and uncertain as the above cited statutes.

On other occasions this Court has held that certain statutes provided fair warning, but only because they punished **willful, intentional** or **knowing** violations. Thus, in upholding § 20 of the Criminal Code, 35 Stat. 1092 (1909), it was stated in **Screws v. United States**, 325 U. S. 91, 102, 65 S.Ct. 1031 (1945):

> "The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware."

See also, **United States v. Petrillo**, 332 U.S. 1, 7, 67 S. Ct. 1538 (1947); **United States v. Ragen**, 314 U.S. 513, 524,

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[32] Similarly, this Court applying the due process clause of the Fourteenth Amendment has struck down many vague state statutes. Some examples are: **Rabeck v. New York**, *supra* (prohibiting the sale of "any . . . magazines . . . which would appeal to the lust of persons under the age of eighteen years or to their curiosity as to sex or to the anatomical differences between the sexes"); **Winters v. New York**, *supra*; **Giaccio v. Pennsylvania**, *supra* ("[I]n all cases of acquittals . . . the jury . . . shall determine, by their verdict, whether the county, or the prosecutor, or the defendant shall pay the costs . . ."); **Domboroski v. Pfister**, 380 U.S. 479, 85 S. Ct. 1116 (1965) (defining a "subversive organization" and a "communist front organization"); **Baggett v. Bullitt**, *supra*; **Cramp v. Board of Pub. Instruction of Orange County, Fla.**, *supra*; **Thornhill v. Alabama**, 310 U.S. 88, 60 S. Ct. 736 (1940) ("Any person . . . who without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of any person, . . . or who picket the works or place of business of such other persons, . . . shall be guilty of a misdemeanor"); **Lanzetta v. New Jersey**, *supra* ("Any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any

62 S. Ct. 374 (1942); **Hygrade Provision Co. v. Sherman**, 266 U.S. 497, 502-503, 45 S. Ct. 141 (1925); **Omaechevarria v. Idaho**, 246 U.S. 343, 348, 38 S. Ct. 323 (1918).

However, since Section 610 does not require willfulness, intent or knowledge for its violation and those elements were indeed found by the jury **not** to be present here (See Argument VII, *infra*), the statute is utterly devoid of any criteria which can save it from its unconstitutional vagueness.

Mr. Justice Rutledge in his concurring opinion in **United States v. CIO**, *supra*, 335 U.S. at 151-53, eloquently demonstrated the "encyclopedic scope" of the statute by at least two of its terms. To his language is now added the further doubt created by the interpretation of the courts below. As such, petitioners submit that Section 610 should be held by this Court to be void as unconstitutionally vague and indefinite.

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crime in this or in any other state, is declared to be a gangster"); **Stromberg v. California**, *supra* ("Any person who displays a red flag, banner or badge or any flag, badge, banner, or device or any color or form whatever in any public place or in any meeting place or public assembly, or from or on any house, building or window as a sign, symbol or emblem or opposition to organized government or as an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character is guilty of a felony"); **Herndon v. Lowry**, *supra*; **Wright v. Georgia**, *supra*; **Bouie v. City of Columbia**, *supra*; **Smith v. Cahoon**, *supra*; **Ashton v. Kentucky**, *supra*; **International Harvester Co. v. Kentucky**, 234 U.S. 216, 34 S. Ct. 883 (1914); **Connally v. General Construction Co.**, *supra*; **Cline v. Frink Dairy Co.**, *supra*; **Smith v. California**, *supra*; **Champlin Refining Co. v. Corporation Comm. of Okla.**, 286 U.S. 210, 243, 52 S. Ct. 559 (1932):

An excellent discussion of unconstitutionally vague statutes is contained in Note, **The Void for Vagueness Doctrine**, 109 U. Pa. L. Rev. 67 (1960).

V

18 U.S.C., § 610 as Construed and Applied by the Courts Below and on Its Face Arbitrarily Discriminates Against Labor Unions, Its Members and Persons of the Laboring Class, Depriving Them of Liberty and Property Without Due Process of Law in Violation of the Fifth Amendment.

Encompassed within the due process clause of the Fifth Amendment is the prohibition against unjustifiable, arbitrary and discriminatory governmental action. **Schneider v. Rusk**, 377 U.S. 163, 168, 84 S. Ct. 1187 (1964); **Bolling v. Sharpe**, 347 U.S. 497, 74 S. Ct. 693 (1954), opinion supplemented, 349 U.S. 294, 75 S. Ct. 753 (1955); **Hirabayashi v. United States**, 320 U.S. 81, 100, 63 S. Ct. 1375 (1943); **Nichols v. Coolidge**, 274 U.S. 531, 542, 47 S. Ct. 710 (1927); **Hurd v. Hodge**, 334 U.S. 24, 35-36, 68 S. Ct. 847 (1948).

The discriminatory aspects of Section 610's interpretation by the Courts below are best approached from the role of organized labor in politics. Labor has been active in politics since even before the birth of this country. See e.g. Woll, **Unions in Politics: A Study in Law and the Workers Needs**, 34 S. Cal. L. Rev. 130, 144-45 (1961); Raybeck, **A History of American Labor** 23-36 (1959). The role is well documented. See generally, Commons, **History of Labor in the United States** (1935); Dulles, **Labor in America** (1955); Raybeck, **op. cit.**, *supra*; Karson, **American Labor Unions and Politics, 1900-1918** (1958).

There is, of course, a recognized need for labor to be involved in politics. **International Association of Machinists v. Street**, 367 U.S. 740, 812-16, 81 S. Ct. 1784 (1961) (Frankfurter, J. dissenting). **United States v. CIO**, *supra*, 335 U.S. at 144 (Rutledge, J. concurring). Indeed, the whole history of American labor, if anything, stands for the proposition that political and legislative activity is a

necessary element of any collective effort by persons of the working class to improve their social and economic conditions. Woll, *supra* at 149. Through collective political action, labor unions have achieved economic goals, which would have been impossible to attain either by members working individually or through the collective bargaining process. Chang, **Political Action and the Taft-Hartley Act**, 33 Neb. L. Rev. 554, 575 (1954). These include *inter alia* public education, social insurance, adequate housing and anti-depression economic policy. Reynolds, **Labor Economics and Labor Relations**, 80-82 (1959). Further, even some goals, such as minimum wages, maximum hours and child labor laws, although attainable through collective bargaining, are achieved more rapidly through the political process. *Ibid.* The legitimate interest of labor in politics coupled with the union's rank and file members becoming politically educated and thereby better informed citizens is the rationale of working men uniting for political action.[33] If, however, members of the laboring class are not free to engage in political activity on the identical basis as groups or associations who oppose labor, then members of the laboring class are surely at an unfair discriminatory disadvantage.

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[33] Article II of the present AFL-CIO Constitution lists two objectives, specifically dealing with political activity as follows:

> "5. To secure legislation which will safeguard and promote the principle of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people and to oppose legislation inimical to these objectives.
>
> * * * * * * * *
>
> "12. While preserving the independence of the labor movement from political control, to encourage workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of the local, state and national communities."

It is, therefore, particularly in the area of due process-equal protection under the Fifth Amendment that the construction of the statute by the Eighth Circuit cannot be reconciled with the necessary role of organized labor in politics. On the one hand, in order to justify the manner in which the instant case was prosecuted and tried (the indictment, the sufficiency of the evidence, the instructions), as being within the scope of Section 610, necessarily requires the holding that voluntariness of the contributions is inconsequential for a violation of Section 610. See Arguments I and II, *supra*. On the other hand, any validation of Section 610 with respect to the due process-equal protection requirements of the Fifth Amendment must logically be premised upon the proposition that Section 610 does not punish non-coercive collective political contributions by the laboring class. This irreconcilable dilemma resulting from the Eighth Circuit's interpretation of Section 610 is clearly evident in the following language of its opinion:

> "The argument is that the corporate executives personally make political contributions which have an impact on the political process, and § 610 prohibits members of the working class from aggregating their funds to have a similar impact. The problem with this argument is that § 610 does not prohibit working men from such activity. Section 610 only prohibits them from being forced into it." **United States v. Pipefitters Local Union No. 562**, 434 F. 2d 1116, 1124 (8th Cir. 1970).

Yet, under the Eighth Circuit's interpretation of Section 610, in the light of the record in the District Court, no consideration at all is given to the issue of whether the contributions by union members were voluntary, so that under its ruling even if the aggregation of funds is non-coercive, section 610 is still violated. See **United States v. Pipefitters Local Union No. 562**, *supra*, at 1120. This

diverse treatment of Section 610 serves to illustrate the lengths to which logic must be stretched in order to conform to the Court's interpretation of Section 610 with due process-equal protection. Either the Eighth Circuit's interpretation of the statute cannot be sustained, or Section 610, as so construed and applied, must be struck down as violative of the petitioners' guarantees of equal protection under the due process clause of the Fifth Amendment. Mere rationalization will not eradicate the dichotomy existing between a broadsweeping pervasive construction of Section 610 and discrimination against members of the working class created thereby.

The practical effect of the Courts' interpretation of the statute, if it be permitted to stand, will be to drive out persons of the laboring class from collective political action in any form. Since union officers, labor officials, and their attorneys will be unable to predict with any degree of certainty what positive political activity will not result in prosecution and conviction, save no political action at all, members of the laboring class will not dare hazard into the political arena, lest they be criminally punished. See Argument IV, *supra*, with respect to the vagueness of Section 610, as construed and applied by the courts below. At the same time, those groups and associations opposed to labor will have free reign to continue their influence on elections.

Although it is true that Section 610 places a like ban on contributions to federal candidates upon corporations, yet in light of the instant interpretation, any assertion that Section 610's discrimination against unions is offset by also being applicable to corporations is futile. For it is management and business associations, such as the Chamber of Commerce and National Association of Manufacturers, which are the arch rivals of organized labor. Corporations are not associations of individuals

formed to promote common group interests through social, educational, political and other means. Corporations are separate legal entities formed for the purpose of earning profits in business. Not even remotely tacit consent is given to the use of these profits for political purposes.[34] Additionally, corporations do not enjoy constitutional liberties guaranteed to individuals and their associations. See e. g., **Thomas v. Collins**, 323 U.S. 516, 539, 65 S. Ct. 315 (1945);[35] **Hague v. CIO**, 307 U.S. 496, 514, 59 S. Ct. 954 (1939); **Liberty Warehouse Co. v. Burley Tobacco Growers Co-op Mktg. Ass'n**, 276 U.S. 71, 89, 48 S. Ct. 291 (1928); **Western Turf Ass'n v. Greenberg**, 204 U.S. 359, 363, 27 S. Ct. 384 (1907); **AFL v. Swing**, 312 U.S. 321, 61 S. Ct. 568 (1941); **Thornhill v. Alabama**, 310 U.S. 88, 60 S. Ct. 736 (1940).

Yet, unincorporated management and business associations and their political committees are nowhere prohibited by federal law from making astronomical political

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[34] Senator Pepper in the debates on section 610, cognizant of this distinction between corporations and unions, stated:

> "[T]he provisions of this measure overlook the essential differences between corporations and labor unions. A corporation is a person, but is not a citizen, under the laws of the United States. A corporation is entitled to the protection of its property, but it cannot vote, because it is not a citizen, in the sense that a person is a citizen. A labor union is not a corporation, it is simply an unincorporated association of people. In legal character, it is no different from a lodge, or a church, or the WCTU, or any other organization of human beings who got together to further their common good." 93 Cong. Rec. 6448.

See also, Overacker, **Presidential Campaign Funds** 69 (1946).

[35] In **Thomas v. Collins**, *supra*, 323 U.S. at 539, the Court declared:

> "[T]he right either of workmen or of unions . . . to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

donations to elect candidates hostile to the labor movement and to pass legislation injurious to labor. Indeed, these discriminatory aspects of section 610 have not gone unnoticed by some members of Congress. During the debates on the predecessor to Section 610, the Smith-Connally Act, 57 Stat. 168, 50 U.S.C. 1509 (1940 ed.), Senator Hatch stated, with Senator Connally's agreement, that for fairness it was necessary to "bring into the same class as labor organizations the employer organizations such as the United States Chamber of Commerce and the National Association of Manufacturers. If one is to be denied the privilege of making political contributions, the other should be also." 89 Cong. Rec. 5721. Senator Hatch introduced a bill containing such prohibitions on the very day the Senate passed the Smith-Connally Act over Presidential veto. 89 Cong. Rec. 6503-04. The bill passed the Senate (90 Cong. Rec. 1643), but not the House. Also, after passage of the Taft-Hartley Act, a bill was introduced in the Senate, which would have stricken from the act the prohibition on expenditures by labor unions, S. 1613, 80th Cong., 1st Sess. (1947), and a bill was introduced in the House, which would have permitted labor unions to make expenditures for political purposes, provided the members thereof voted to make funds available for such use. H.R. 4193, 80th Cong., 2d Sess. (1948). Neither bill was acted upon. On April 1, 1948, a minority report of the Joint Committee set up by the Taft-Hartley Act to observe its operation was filed urging immediate repeal of the ban on labor union expenditures. Sen. Rep. No. 986, 80th Cong., 2d Sess., pt. 2, 15 (1948).

Because Section 610 is not applicable to unincorporated management and business associations, such organizations have and will continue to spend vast amounts of money in anti-labor campaigns. This is significantly reflected in the reported expenditure of over four million dollars by the National Association of Manufacturers in 1947, the

year the instant law was passed as part of the Taft-Hartley Act, Cong. Quart. Weekly Rep. 268 (1948); Gable, **NAM—Influential Lobby or Kiss of Death?**, 15 Journ. of Politics 254, 263 (1953),[36] and the over two million dollars expenditures of the same group in 1954 for a "public information program". Key, **Politics, Parties and Pressure Groups** 100 (1958). It is beyond the purposes of this brief to detail the enormous sums of money business and management associations pour into federal campaigns. Suffice it to say that because Section 610 is a total ban on contributions by organized labor, especially in light of its expanded interpretation by the courts below, even non-substantial contributions by business and management

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[36] During the debates on the Taft-Hartley act, Senator Aiken, a supporter of the bill stated in the Senate on May 12, 1947, his feelings concerning the tremendous campaign by the National Association of Manufacturers as follows:

> "It is a wonder that Members of the Senate can hold their tempers and vote on the bill according to their best judgment, because we have been subjected to the most intensive, expensive, and vicious propaganda campaign that any Congress has ever been subject to.
>
> I do not refer to the propaganda campaign of the labor unions, although I hold no brief for that. I refer to a propaganda campaign which has cost well into the millions of dollars. I should not be surprised if the total amount spent in this campaign would amount to at least $100,000,000. I told the Senate last spring that the single March advertising campaign in the newspapers against labor by the National Association of Manufacturers cost $2,000,000, and that statement has not been contradicted as yet, although it was made a year ago. . . .
>
> If the conference committee undertakes to do to the bill what certain organizations, including the Chamber of Commerce of the United States, the National Association of Manufacturers, and the Committee for Constitutional Government, Inc. wish to have done to it, such a bill should not become law, and the President would be fully justified in vetoing it." 93 Cong. Rec. 5015-17.

See also the remarks of Representative Arthur G. Klein (93 Cong. Rec. 3421); Representative Frank Buchanan (93 Cong. Rec. 3451); and Senator James E. Murray (93 Cong. Rec. 7469) as to the National Association of Manufacturers' participation in the Taft-Hartley legislation.

associations still presents a discriminatory favoritism toward business and management. Kallenbach, **The Taft-Hartley Act and Union Political Contributions and Expenditures**, 33 Minn. L. Rev. 1, 22 (1948). Yet it would be naive to presume that business and management associations' federal campaign contributions are likely to be non-substantial.

Moreover, there are a multitude of other groups and associations not restricted by Section 610, which, although not traditionally opposed to labor, present tangible disadvantages to labor. The American Medical Association, for instance, spent more than 3½ million dollars to fight Medicare in the 1950 campaign. Hyde & Wolff, **The American Medical Association; Power, Purposes and Politics in Organized Medicine**, 63 Yale L. Journ. 938, 1012-17 (1954). Miscellaneous national committees spent approximately $790,000, $851,000 and $1,963,000 in the 1956, 1960 and 1964 elections respectively. Alexander, **Financing the 1960 Election** 43-44 (1962), **Financing the 1964 Election** 65 (1970) (contained in **Studies in Money in Politics**, 2 vols.). Section 610's inequality is further highlighted by the fact that the communications media, which have no statutory restraints, are controlled by pro business-management and anti-labor interests. See, Zeigler, **Interest Groups in American Society** 134-35 (1964), **Hearings Before the Committee to Investigate Expenditures, Campaign Expenditures, Bhd. of Rd. Trainmen**, 79th Congress, 2d Sess., res. 645, pt. 6, at 262 (1946). See Argument I, *supra*, at pp. 67-8.

To the above-mentioned anti-labor money contributed in federal campaigns must also be added the funds contributed by wealthy individuals and their families in overt circumvention of the prohibitions of the Hatch Act (18 U.S.C., § 608) and of Section 610. Thus, for example, twelve families contributed $1,153,735, $646,521

and $602,926 during the 1956, 1960 and 1964 presidential campaigns,, respectively. Alexander, **op. cit.**, *supra*, **Financing the 1960 Election**, 61 (1962), **Financing the 1964 Election**, 89 (1970).[37] Laborers can approach this kind of financial strength only by pooling their resources. Considering that for the same three elections, national level labor committees which represent millions of persons made gross disbursements of approximately $2,106,000, $2,227,000 and $3,664,000, as compared with the amount that said twelve families contributed; the discrimination inherent in our corrupt practices laws becomes evident. *Id.* **Financing the 1960 Election** at 41; **Financing the 1964 Election** at 63.

Even so, the amount of money contributed by only twelve families is no real indication of the vast sources of funds contributed by persons hostile to labor.[38] See, for example the lists of the names and amounts of the $10,000 and over political contributions in the 1960 and 1964 elections. On the average, little better than 100 persons con-

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[37] The twelve families are: du Pont, Field, Ford, Harriman, Lehman, Mellon, Olin, Pew, Reynolds, Rockefeller, Vanderbilt and Whitney.

[38] A better indication of the vast sources of money being contributed by corporations, their officials and families in politics was revealed in 1950 by General Motors with the announcement that it had given to tax-exempt propaganda outfits and trade associations more than 4½ million dollars between 1947 and 1950. H.R. Rep. No. 3137, 81st Cong., 2d Sess. 284-301 (1950); Cong. Quart. Alamanac 763 (1950).

The corporations can aggregate large political contributions in a number of ways: by listing them in various expense accounts, by having employees purchase blocks of tickets to $100-plate dinners indirectly with corporate funds, by buying advertisements in National Party Program Books, etc. and by having the executives contribute directly to campaign chests with the understanding that they will get their money back in bonuses. Taylor, **How to Give Money to Politicians**, Fortune, May 1956, at 238. See also, Kovarsky, **Unions and Federal Elections—A Social and Legal Analysis**, 12 St. L.U.L. Journ. 358, 375 (1965); McKean, **Party and Pressure Politics**, 352-53 (1949); Merriam & Gosnell, **The American Party System** 406-407 (1949).

tribute nearly $2,000,000 to the Presidential elections. *Id.* **Financing the 1960 Election** at 59, 98-103, **Financing the 1964 Election** at 88, 128-131.

Taking together the contributions by thousands of corporations, their officers and families, business and management association and other interest groups hostile to labor, the working class has always been at a disadvantage in politics.[39] The interpretation by the courts below will greatly increase this already existant disparity between the participation of labor in politics and those who oppose it, so much more so, that for all practical purposes a large segment of our society (the laboring class) will be left with no voice. This the Court has been reticent to allow in other areas of political concern. See e.g., **Baker v. Carr**, 369 U.S. 186, 82 S. Ct. 691 (1962); **Reynolds v. Sims**, 377 U.S. 533, 84 S. Ct. 1362 (1964); **Kirkpatrick v. Priester**, 394 U.S. 526, 89 S. Ct. 1225 (1969); **Wells v. Rockefeller**, 394 U.S. 542, 89 S. Ct. 1234 (1969); **Avery v. Midland County**, 390 U.S. 474, 88 S. Ct. 1114 (1968); **Williams v. Rhodes**, 393 U.S. 23, 89 S. Ct. 5 (1968); **Harper v. Virginia State Board**, 383 U.S. 663, 86 S. Ct. 1079 (1966); **Phoenix v. Kolodziejski**, 399 U.S. 204, 90 S. Ct. 1990 (1970).

Petitioners submit that in view of the unwarranted judicial enlargement of section 610 by the courts below, the statute is now rendered unjustifiably discriminatory, so as to deny members of the laboring class an active participation in federal election campaigns, while those opposed to labor have no similar restraints all in violation of the due process clause of the Fifth Amendment.

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[39] For example, during 1959, the year preceding passage of the Landrum-Griffin Act, when labor was also concerned with many State "right to work" laws, the AFL-CIO's Legislative Department and COPE together spent a total of only 1.15 million dollars. **AFL-CIO Report of the Executive Council** 18-19 (1959); Woll, **Unions in Politics, A Study in Law and the Workers' Needs**, 34 S. Cal. L. Rev. 130, 149 (1961).

VI

Section 610, Title 18, United States Code as Construed and Applied by the Courts Below, and on Its Face, Unlawfully Abridges the Rights of Petitioners and All Union Members to Vote and (to) Choose Their Senators and Representatives in Congress, as Guaranteed by Article I, Section 2, and the Seventeenth Amendment to the Constitution of the United States of America.

Section 610, as construed and applied by the courts below, and on its face, constitutes, creates, and expresses the equivalent of a blanket prohibition upon activities of union members in associating, combining, and pooling their resources to the end of political expression. It is the position of these petitioners that such a result abridges, disparages, and renders virtually meaningless the constitutionally granted right of these petitioners and all union members to choose their federal representatives.

Article I, Section 2, of the Constitution of the United States of America provides in pertinent part that:

> "The House of Representatives shall be composed of Members chosen . . . by the People of the several States,"

and, the Seventeenth Amendment to the Constitution of the United States provides that:

> "The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof . . .[40]

Therefore, the right to vote for members of the Congress of the United States of America is not derived merely

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[40] In the absence of a showing that the Congress which proposed a constitutional amendment, or the state legislatures which ratified it, intended a different meaning, the Court would give effect to the natural reading of the amendment. **Valenti v. Rockefeller**, D.C.N.Y. 1968, 292 F. Supp. 851, rehearing denied, 89 S. Ct. 989, 393 U.S. 1124.

from the constitution and laws of the State in which the members are chosen, but, rather, this right has its foundation in the Constitution of the United States of America. And, this Court has long recognized that this right of qualified voters to select their congressional representatives has been granted federal constitutional protection.[41] In **United States v. Classic** (313 U.S. 299, at 314), Mr. Justice Stone, writing for the majority stated:

> "Section 2 of Article I commands that Congressmen shall be chosen by the people of the several states by electors, the qualifications of which it prescribes. The right of the people to choose . . . is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the state entitled to exercise the right."

The decision and that statement from **United States v. Classic**, 313 U.S. 299, 61 S.Ct. 1031 (1941), was paralleled and buttressed by the decision in **Wesberry v. Sanders**, 376 U.S. 1, 8, 84 S.Ct. 526 (1964), wherein the Court stated some two decades later:

> "We hold that, construed in its historical context, the command of Article I, Section 2, that Representatives be chosen 'by the People of the several States' means, that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."[42]

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[41] **Ex parte Yarborough**, 110 U.S. 651, 4 S. Ct. 152 (1884); **Wiley v. Sinkler**, 179 U.S. 58, 21 S. Ct. 17 (1900); **Swafford v. Templeton**, 185 U.S. 487, 22 S. Ct. 783 (1902); **United States v. Mosely**, 238 U.S. 383, 35 S. Ct. 904 (1913); **United States v. Classic**, 313 U.S. 299, 61 S. Ct. 1031 (1941); **United States v. Saylor**, 322 U.S. 385; 64 S. Ct. 1101 (1944); **Smith v. Allwright**, 321 U.S. 649, 64 S. Ct. 757 (1944); **Gray v. Sanders**, 372 U.S. 368, 83 S. Ct. 801 (1963); **Wesberry v. Sanders**, 376 U.S. 1, 84 S. Ct. 526 (1963).

[42] The record of the adoption and the ratification of the Constitution fully supports this conclusion of the Supreme Court. It is stated in **United States v. Classic**, 313 U.S. 299, 316, 61 S. Ct. 1031 (1941), that "the free choice by the people of repre-

The Court further stated in **Wesberry**, supra, at 17-18:

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

The length and breadth of the rights of qualified voters in the United States created by the Constitution has been delineated by the Court in numbers of cases. Some of these cases arose under the Civil Rights statutes, which provide remedies against private or governmental action impairing constitutionally secured rights (18 U.S.C. 241, 242; 42 U.S.C. 1981, 1983). The decisions recognize the existence, availability, and duty of federal authority to protect rights arising under Article I, Section 2.[43]

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sentatives in Congress . . . was one of the great purposes of our constitutional scheme of government . . ." The principle of popular election of the House of Representatives was debated at several points by the Constitutional Convention, and the principle consistently prevailed (II Eliot, Debates at the Federal Convention, pp. 136 et seq., 160 et seq., 223 et seq.). Madison considered popular election "as essential to every plan of free government" (Id. at 137), and the primary importance of popular election of the House of Representatives was emphasized to the voters considering ratification of the proposed Constitution in many issues of the Federalist papers (See Numbers 47, 52, 53, 55, and 57). Choice by the people was pointed to as the safeguard against tyranny and treachery by the Congress (Federalist papers, Number 55).

[43] The courts have held the following to be attributes of the right to vote which Congress may safeguard, either by application of criminal sanctions or provisions for civil relief: (a) The right to vote, either in a general election or a primary, which is an integral part of the electoral process (**Ex parte Yarborough**, *supra*; **Wiley v. Sinkler**, *supra*; **Swafford v. Templeton**, *supra*; **Smith v. Allwright**, *supra*); (b) The right to have the force of the vote protected against ballot stuffing (**United States v. Saylor**, *supra*; **Ledford v. United States**, 155 F.2d 574 (6th Cir. 1946), cert. denied 329 U.S. 733), or against the votes of

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." **Reynolds v. Sims**, 377 U.S. 533, 555, 87 S. Ct. 1382 (1964).

In **Reynolds v. Sims**, *supra*, the Supreme Court called attention to a myriad of prior cases indicating that a qualified voter has a constitutional right to vote in elections without having his vote wrongfully denied, debased, or diluted.[44] And, the Supreme Court has held that a qualified voter in an election also has a constitutional right to have his vote counted with substantially similar weight as that of any other voter in a case where the elected officials exercised general governmental powers over the entire geographic area served by the body. Avery v. Midland County, 390 U.S. 474.

The Court stated in **Evans v. Cornman** (398 U.S. 419, at 422)" . . . the right to vote, as the citizen's link to his laws and government, is protective of all fundamental rights and privileges" (The Court there citing **Yick Wo v. Hopkins**, 118 U.S. 356, 370 (1886); **Wesberry v. Sanders**, supra).

"And before that right (to vote) can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny" (**Evans v. Cornman**, supra at 422).

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unqualified voters (**United States v. Wilson**, 72 F. Supp. 812 (W.D. Mo. 1947), or against dilution by disapportioned districts (**Gray v. Sanders**, *supra*; **Wesberry v. Sanders**, *supra*); (c) The right of a qualified voter to register (**United States v. Ellis**, 43 F. Supp. 321 (W.D.S.C. 1942); (d) The right to sit on an election board, or to act as judge, inspector, or poll clerk at an election for Congressman or Senator (**United States v. Aczel**, 219 F. 917 (D. Ind. 1915)).

[44] Among the cases cited are **Ex parte Siebold**, 100 U.S. 371 (1880); **Ex parte Yarborough** *supra*; **Guinn v. United States**, 238 U.S. 347 (1915); **Lane v. Wilson**, 307 U.S. 268 (1939); **United States v. Classic**, *supra*.

The Court further states in **Evans v. Cornman**, *supra*, that a persons vote may not be diluted to give weight to other interests, citing there **Reynolds v. Sims**, supra.

In the case of **Kramer v. Union School District**, 395 U.S. 621, 89 S.Ct. 1886 (1969), Justice Warren writing for the majority stated (citing **Reynolds v. Sims**, *supra*), "Since the right to exercise the franchise is a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." The Court continued at 626:

> "Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government."[45]

Therefore, the constitutionally granted right of qualified voters to choose their representatives constitutes a guarantee of the right of "effective choice" (United States v. Classic, supra, at p. 314). These petitioners submit that this constitutionally granted right of a qualified voter in the United States of America to make an effective choice of Congressional representatives requires more than simply protecting the mechanics of the casting of the vote and the counting of the ballots; these petitioners further submit that this constitutional right includes and requires group political action.

This Court in **Reynolds v. Sims**, supra, not only stated that "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government," but the Court continued at p. 555:

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[45] The Court in **Williams v. Rhodes**, 393 U.S. 23, at 39, cites **Wesberry v. Sanders**, *supra*, for the proposition that the "rights of expression and assembly may be illusory of the right to vote is undermined."

"And the right of sufferage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

Section 610, Title 18, United States Code, as construed and applied by the courts below, as well as on its face, constitutes such a "debasement or dilution" of the vote of these petitioners as well as all other union members, and, as such, creates a most dangerous breach from the American tradition of group political activity.[46]

The Voting Rights Act of 1965, in general, and Section 5 of that statute, in particular, give broad interpretation to the constitutionally granted right to vote, recognizing that the term "voting" means and includes "all action necessary to make a vote effective" (79 Stat. 437, 445, 42 U.S.C., Section 1973 l (c) (1) (1964 ed. Supp. I).

These petitioners submit to this Court that "all action necessary to make a vote effective" not only includes group political action, but, in certain circumstances, demands and requires such action. Section 610 as construed and applied in the courts below and on its face require union members to discard their only effective means of political expression involving their livelihood,

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[46] Mr. Justice Rutledge stated in **United States v. C.I.O.**, *supra*, 335 U.S. at 147, regarding Section 610, that "[T]he accepted principle of majority rule which has become a bulwark, indeed perhaps the leading characteristic, of collective activities is rejected in favor of atomized individual rule and action in matters of political advocacy . . ." Manifestly a nation cannot maintain effective democratic government if every individual voter must act alone. It is only through association in groups that he can further his general economic interests and hope to achieve any political effectiveness in our complex modern society. As the Supreme Court stated in **Sweezy v. New Hampshire**, *supra*, 354 U.S. at 250: "Exercise of these basic freedoms (referring to political expression) in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of the adherents."

their union (See Justice Frankfurter's dissent in the case of **Machinists v. Street**, *supra*, 367 U.S. at 800-801, 812-816). They are now forbidden voluntary association for and to the end of political expression; they may no longer seek to benefit by political and lawful means the organization to which they look for many things (see Argument I, *supra*, at pp. 54, 66). The immediate effect and result of this statute is the deprivation of working men and women of their freedom to protect their interests as union members; the statute constitutes a deprivation of union members of their only organized means of protection of their interests.

VII

The Jury by Making a Special Finding in Its Verdict "That a Willful Violation of Section 610 of Title 18, United States Code, Was Not Contemplated," Found Lacking an Essential Element (Willfulness) of Any Conspiracy Under Section 371, Title 18, United States Code to Violate a Substantive Statute Which Is *Malum Prohibitum*, and Thereby Acquitted the Petitioners.

Section 371, Title 18, United States Code provides in pertinent part that:

> "If two or more persons conspire . . . to commit any offense against the United States . . ., and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
>
> "If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Upon the trial of this cause, the jury was provided with two forms upon which and with which to return its verdict

(Tr. 2079; A. 1119). On "Verdict Form A", the jury could find each defendant guilty or not guilty "as charged in the indictment." On "Verdict Form B", which was identical in all respects to "Verdict Form A", except that upon "Verdict Form B", was endorsed the additional special finding that: "We further find that a willful violation of Section 610 of Title 18, United States Code was not contemplated" (Tr. 2079; A. 1119).

The jury was instructed that it must employ only one of the forms supplied for expression of its verdict and that it must make a separate finding as to each defendant. The jury was further instructed that if it found the defendant guilty or not guilty of the offense charged, it was to utilize Verdict Form A; if it found one or more of the defendants "guilty of the willful conspiracy charged" and further found "that the conspiracy of which said defendant is found guilty did not contemplate a willful violation of Section 610", it was to utilize Verdict Form B (Tr. 2079; A. 1119).

Verdict Form A was disregarded by the jury, which returned a guilty verdict on Verdict Form B. By so doing, the jury specifically found that "a willful violation of Section 610, Title 18, United States Code was not contemplated" by any of the defendants (Tr. 2083; A. 1125-26). These petitioners submit that the special finding of the jury may be expressed in the following manner:

1) No defendant had knowledge that his actions, alone or in concert with the actions of the other defendants, were unlawful in violation of the provisions of Section 610, Title 18, United States Code; and

2) No defendant intended, by his action alone or in concert with the actions of other defendants, to violate Section 610, Title 18, United States Code.[47]

[47] These petitioners submit that to contemplate a willful violation of a statute requires at least knowledge that the act is un-

By so expressing itself, the jury in fact found essential elements of conspiracy under Section 371, Title 18, United States Code, lacking and its verdict was in effect an acquittal.

These petitioners submit that there can be no question that the proscriptions contained and set forth in Section 610, Title 18, United States Code are *malum prohibitum* as opposed to being *malum in se.*[48]

Where the substantive offense is *malum prohibitum*, criminal conspiracy requires both knowledge that the conduct that is the purpose of the conspiracy is unlawful or is to be affected by unlawful means and a definite and

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lawful, together with a specific intent to do that which is forbidden. The case of **Masinia v. United States,** 296 F.2d 871, 879 (8th Cir. 1963), defines "willfully" in this sense as "something not expressed by knowingly. It means purposely or obstinately, one who having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." And, **Ryan v. United States,** 314 F.2d 306, at 310 (10th Cir. 1963) states: "An act is done knowingly if it is done voluntarily and purposely, not because of mistake or inadvertence. An act is done willfully if done voluntarily and purposely and with the specific intent to do that which the law forbids. That is to say, an act done with bad purpose either to disobey or disregard the law. See also, Black, Law Dictionary, "Willful".

[48] The conduct restricted cannot be deemed an offense against the common law, and, in fact, was only recently prohibited; these petitioners submit that there is nothing inherently culpable in banks, corporations, or labor organizations making contributions or expenditures in connection with public elections. During the course of Senate debate and consideration of what is now Section 610, Title 18, United States Code, Senator Taft, recognizing this statute to be *malum prohibitum*, stated: ". . . If any abuses arise with respect to other organizations, we can extend the provision of law to the other groups." 93 Cong. Rec. 6441. See also **Morissette v. United States,** 342 U.S. 246, 72 S. Ct. 240 (1952); **United States v. Boyce Motor Lines,** 188 F.2d 889 (3rd Cir. 1951), affirmed 342 U.S. 337, 72 S. Ct. 329 (1952); **United States v. Balint,** 258 U.S. 250, 42 S. Ct. 301 (1929); Perkins, Criminal Law 692-710 (1956), on crimes *malum prohibitum.*

specific intent to do that which has been declared to be unlawful.[49] These two requirements call for and require the *mens rea* and *scienter* which represent and embody the rule and the spirit of Anglo-American criminal jurisprudence.[50]

Even assuming that an awareness of the unlawfulness of the act (and a definite and specific intent to violate the law), may not be an element of a substantive offense proscribed by Section 610, knowledge and an awareness of the unlawfulness of conduct not inherently wrongful or evil which is prohibited (and consequently intent to agree to perform an unlawful act) are necessary and indispensa-

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[49] Perkins, Criminal Law 544-546 (1957) at page 545 states that in a charge of conspiracy, "Innocence because of lack of knowledge may be established even if what is not known is a matter of law if the 'offense' contemplated by the combination is something not inherently wrong but merely prohibited by statute. While a combination for the purpose of doing what is thus forbidden is wrongful if the law is known, it is not wrongful otherwise." Harno, Intent in Criminal Conspiracy, 89 U. Pa. L. Rev. 624 (1941), states at page 640: "Since the intent in conspiracy reaches beyond the act accomplished and portends the commission of a further act, and so is the substance of the offense. . . . The accused must be shown to have harbored a specific intent to do an unlawful act." See also, Harno, Intent in Criminal Conspiracy, id., 635, 646-647; Developments in the Law, Criminal Conspiracy, 72 Harvard L. Rev. 920, 935-937 (1959); Wharton's Criminal Law and Procedure, Section 85 (1959); Note, Criminal Conspiracy, 38 Harvard L. Rev. 96, 97 (1927); 15A C.J.S., Conspiracy, Section 45, at pp. 755-758.

[50] The Supreme Court in **Dennis v. United States**, 341 U.S. 494, 500, 71 S. Ct. 857 (1951), stated: "A survey of Title 18 of the United States Code indicates that the vast majority of the crimes designated by that title require, by express language, proof of the existence of a certain mental state, in words such as 'knowingly', 'maliciously', 'wilfully', 'with the purpose of', 'with intent to' or combinations or permutations of these and synonymous terms. The existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence (The Court therein citing **American Communications Assn. v. Douds**, 339 U.S. 382, 411 (1950)); **Smith v. California**, 361 U.S. 147, 150, 80 S. Ct. 215 (1959).

ble elements of the crime of conspiring to violate the prohibitory statute.[51]

> "It is fundamental that a conviction for conspiracy under Section 371 cannot be sustained unless there is 'proof of an agreement to commit an offense against the United States.' " **Ingram v. United States**, id., at 677-78.

It is hornbook law that when knowledge of a fact is required to convict for a substantive offense, knowledge is also required to convict for conspiracy to commit the substantive offense. **United States v. Ausmeier**, 150 F.2d 349 (2nd Cir. 1945); **Fulbright v. United States**, 91 F.2d 210 (8th Cir. 1937). A conspiracy is not only a separate and distinct offense from the substantive charge which is the end to which the agreement and conduct is directed (**Ingram v. United States**, *supra*; **Pinkerton v. United States**, 328 U.S. 640, 66 S. Ct. 1180 (1946); **Braverman v. United States**, 317 U.S. 49, 63 S. Ct. 99 (1943), but also because the basic ingredient of conspiracy is the agreement. The Supreme Court stated in **United States v. Falcone**, 311 U.S. 205, 61 S. Ct. 204 (1940), at 210: "The gist of the offense of conspiracy . . . is agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy", the Court there citing **Pettibone v. United States**, 148 U.S. 197, 13 S. Ct. 542 (1893); **Marino v. United States**, 91 F.2d 691; **Troutman v. United States**, 100 F.2d 628; **Beland v. United States**, 100 F.2d 289. See also **Rent v. United States**, 209 F.2d 893, 896 (5th Cir. 1954). Therefore, these petitioners submit that where the proscribed action is not wrongful in and of itself, absent an

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[51] **Ingram v. United States**, 360 U.S. 672, 79 S. Ct. 1314 (1959); **Keegan v. United States**, 325 U.S. 478, 65 S. Ct. 1203 (1945); **Landen v. United States**, 299 Fed. 75 (6th Cir. 1924); **Bergen v. United States**, 145 F(2) 181, 187 (8th Cir. 1944); **United States v. Belisle**, 107 F. Supp. 283, 287 (W.D. Mo. 1951).

awareness of the illegality of the conduct, an agreement to violate the law can never exist; under these circumstances, neither can a criminal conspiracy be found.[52]

The case of **Fall v. United States**, 209 F. 547 (8th Cir. 1913), holds at 553 that ". . . where the government relies upon circumstances to prove a conspiracy . . . the case comes within that class where an intent different from the ordinary criminal intent must be shown." Of the same import are, **Fulbright v. United States**, 91 F.2d 270 (8th Cir. 1937); **Bergen v. United States**, 145 F.2d 181, 187 (8th Cir. 1944); **Blumenthal v. United States**, 88 F.2d 522 (8th Cir. 1937).[53]

In **Landen v. United States**, 299 F. 75 (6th Cir. 1924), the Court reversed a conspiracy conviction, stating:

> "It is settled that with regard to criminal prosecutions for those acts which are not *mala in se*, but which through legislative exercise of the police power have become *mala prohibita*, no conscious intent to

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[52] Since each and every agreement, be it lawful or unlawful, stands only upon and after a "meeting of the minds", **O'Neill v. Corporate Trustees, Inc.**, 376 F.2d 818, 820 (5th Cir. 1967); **A. E. Staley Mfg. Co. v. Northern Cooperatives**, 168 F.2d 892, 895 (8th Cir. 1948), it would be impossible to have an agreement to violate the law where the law is merely *malum prohibitum*, unless the parties to the agreement know that the act which is the object of the conspiracy is unlawful and mutually intend to perform that act knowing it to be unlawful. This is so because a charge of conspiracy to violate a criminal law has implicit in it the elements of knowledge and intent. **Schnautz v. United States**, 263 F.2d 525.

[53] Indeed, the Courts have gone much further in requiring what one commentary has labeled as an "anti-federal intent". Developments in the law, Criminal Conspiracy, 72 Harvard L. Rev. 920, 937 (1959); see **Davidson v. United States**, 61 F.2d 250 (8th Cir. 1932); **Linde v. United States**, 13 F.2d 59 (8th Cir. 1926); **Dickerson v. United States**, 18 F.2d 887 (8th Cir. 1927). See also, **Hernandez v. United States**, 300 F.2d 114, 121 (9th Cir. 1962); **United States v. Crimmins**, 123 F.2d 271 (2nd Cir. 1941); **Pettibone v. United States**, 148 U.S. 197, 207, 13 S. Ct. 542 (1893).

break any law is essential. The respondent need not even know that the law exists (cit. omitted). When, however, the prosecution is for conspiracy, the text books and elementary discussions seem to agree that there must be a 'corrupt intent', which is interpreted to be the mens rea, the conscious and intentional purpose to break the law (cit. omitted) . . .

. . . . . .

"We find nothing which goes further in modifying the generality of this principle than the decision of this Court in the Chadwick case, 141 Fed 225, 243, . . . to the effect that knowledge of the law which prohibits an act 'of evil design and wrongful purpose' will be imperatively imputed to the respondents, or the decision of the Second Circuit Court of Appeals in the Hamburg-American case, 250 Fed 747, 758, 759 . . . to the effect that, where the act to be done is malum in se, it is not controlling that the respondent does not in fact know of the specific prohibitory act. The principle of these two decisions does not reach a case where the contemplated act is not inherently wrongful, where the prohibitory statute is ambiguous, where there is good reason for both lawyers and laymen to think that the act planned is not prohibited, and where the respondent plans and does the act in the actual belief, supported by good-faith advice of counsel, that it is a lawful act. In such a situation the conclusion that the respondent has a 'corrupt intent' to violate the law is, in our judgment, one repugnant to the fundamental principles of justice, and not to be adopted unless under the compulsion of authoritative decisions. We find nothing requiring such adoption." Id. at 78-79.[54]

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[54] In the two federal cases cited by **Landen**, *supra*, namely **Hamburg American Steam Packet Co., v. United States**, 250 Fed. 747, 759 (2d Cir. 1918) and **Chadwick v. United States**,

Much authority in accord with the Landen case can be found.[55] And, the holding in **Keegan v. United States**, 325 U.S. 478, 65 S. Ct. 1203 (1945), supports and buttresses the position of these petitioners. In the **Keegan** case, the Supreme Court reversed convictions for conspiracy to counsel evasion of military service, stating:

> "Here the honesty and bona fides of the defendants is said to be immaterial; the fact that they desired to test the constitutionality of the law is said to be immaterial [by the 2nd Circuit]. Nowhere is it stated that Bund Command No. 37, without more, does not amount to counselling to evade military service. Mingled with instructions that innocent motives were no excuse, and the intention to test the constitutionality of the law was no excuse, are statements

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141 Fed. 225, 243 (6th Cir. 1905), the statements are dictum and inconsistent with other statements in the opinions. Furthermore, any authority possessed by the **Chadwick** case has been destroyed by the 6th Circuit, since **Landen v. United States**, *supra*, is a later case.

[55] See, e.g., **Cruz v. United States**, 106 F.2d 838 (10th Cir. 1939); **Rent v. United States**, 209 F.2d 893 (5th Cir. 1954); **Razette v. United States**, 199 F.2d 44, 50 (6th Cir. 1952); **Mackreth v. United States**, 103 F.2d 495 (5th Cir. 1939); **Pelz v. United States**, 54 F.2d 1001 (2nd Cir. 1932); **United States v. Woll**, 157 F. Supp. 704 (E.D. Pa. 1957); **United States v. Markowitz**, 176 F. Supp. 681 (E.D. Pa. 1959); **United States v. Belisle**, 107 F. Supp. 283, 287 (W.D. Mo. 1951).

There are also many state cases which would require specific intent for a conspiracy to commit a substantive offense which in malum prohibitum. **People v. Powell**, 63 N.Y. 88 (1875); **People v. Flack**, 125 N.Y. 324, 26 N.E. 267 (1891); **Wood v. State**, 47 N.J.L. 461, 1 Atl. 509 (1885); **Commonwealth v. Gormley**, 77 Pa. Super. 298 (1921); **Commonwealth v. Benesch**, 290 Mass. 125, 194 N. E. 905 (1935); **Mitchell v. State**, 248 Ala. 169, 27 So. (2) 36 (1946). The majority of these cases are approvingly discussed in Harno, Intent in Criminal Conspiracy, 89 U. Pa. L. Rev. 624 (1941). **Mitchell v. State**, *supra*, held that an indictment for conspiracy . . . would not support conviction where the indictment did not allege guilty knowledge of the defendants and the acts which were the basis of the conspiracy were not inherently unlawful.

that these are not excuses where there is a conspiracy knowingly to counsel evasion of military service. The statements are mutually contradictory. One with innocent motives, who honestly believes a law is unconstitutional and, therefore, not obligatory, may well counsel that the law shall not be obeyed; that its command shall be resisted until a court shall have held it valid, but this is not knowingly counseling, stealthily and by guile, to evade its command." Id. 325 U.S. at 493-94.

See also, **United States v. Falcone**, 311 U.S. 205, 61 S. Ct. 204 (1940); **Pettibone v. United States**, 148 U.S. 419, 13 S. Ct. 542 (1893); **Danielson v. United States**, 321 F.2d 441 (9th Cir. 1963).

The Supreme Court in **United States v. Rabinowich**, 238 U.S. 78, stated at 88, that

"For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws . . . involves deliberate plotting to subvert the laws . . ."

". . . conviction of conspiracy to commit the substantive offense required proof of the knowledge essential to conviction of the substantive offense itself, for '[i]f this minimum intent is not present, no offense is contemplated' by the alleged conspirators." **United States v. Roselli**, 432 F.2d 879, 889 (1970).[56]

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[56] The Court therein citing **Ingram v. United States**, *supra*; **United States v. Chase**, 372 F.2d 453, 460 (4th Cir. 1967); **Hernandez v. United States**, 300 F.2d 114, 120 (1962); **United States v. Gardner**, 171 F.2d 753, 754 (7th Cir. 1948); Developments in the law, Criminal Conspiracy, 72 Harvard L. Rev. 920, 935-37 (1959), wherein it is stated that a "conspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself."

A conspiracy to violate a criminal statute is bottomed on an unlawful and wilful intention. **Williams v. United States**, 208 F.2d 447, cert. den. 74 S. Ct. 531, 347 U.S. 928 (C.A.Fla.).

In the case at bar, there occurred no plotting or "meeting of the minds" to either overtly or covertly breach any statute; there was evidence introduced (Statement, *supra* at 19) that petitioners relied on advice of counsel as to a legally cognizable method upon which to proceed; and there was evidence (Statement, *supra* at 19-20) of good faith compliance on the part of these petitioners with the provisions of Section 610, Title 18, United States Code. It is also evident that these petitioners, had not the vaguest intention to violate Section 610; to the contrary, each of them made every effort to comply with that section. Accordingly, these petitioners respectfully direct the attention of this Court to the case of **United States v. Murdock**, 290 U.S. 389, 54 S. Ct. 223, 78 L. Ed. 381 (1933) wherein the Supreme Court at 290 U.S. 396 stated, referring to the income tax laws that: "Congress did not intend one to become a criminal by reason of a bona-fide misunderstanding as to his duty." This case is not dissimilar in principle.

Therefore, consistent with the jurisprudential thought that the crime of conspiracy requires knowledge that the goal of the conspiracy is unlawful and a definite and specific intent to violate the law, the verdict returned by the jury upon the trial of this cause was an acquittal, since the trier of fact found that these defendants were unaware that their actions violated statutory proscriptions and, further, that they did not intend to violate the law.

VIII

The Majority of the Court of Appeals Sitting *En Banc* Erred in Refusing to Rule on the Question as to Whether the Instructions of the Trial Court Were Incorrect.

The majority of the Court of Appeals *en banc sua sponte* refused to rule on the question as to whether the Trial Court's instructions were erroneous.[57] The majority held that it could not legally rule because the petitioners prayed for a reversal and discharge in their original brief filed in that Court and did not specifically ask for a new trial. As shown in the dissenting opinions written by Judges Heaney and Lay and as we demonstrate here, the holding by the majority is not only in direct conflict with many decisions of this Court, but additionally (1) the Trial Court's instructions were in fact attacked as error by petitioners in their original brief filed in the Eighth Circuit; (2) the Court of Appeals set aside the original submission of the appeal; (3) the Court of Appeals directed the parties to file supplemental briefs for the benefit of the Court *en banc* after petitioners had specifically requested permission to file a supplemental brief for the purpose of arguing that said instruction was erroneous; (4) petitioners did file such a supplemental brief, specifically questioned the propriety of the instruction and requested a new trial without any objection or claim of abandonment by the Government; and (5) in the public interest and to guard against manifest injustice, such an obvious error should be corrected.

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[57] All three dissenting Judges held that said instructions were erroneous and that petitioners should be granted a new trial. On this issue petitioners request a new trial on the misdemeanor. Of course, such request does not waive their acquittal below by the jury on the felony charge. **Price v. Georgia**, 398 U.S. 323, 90 S. Ct. 1757 (1970).

A. Trial Court's instructions were objected to at trial and attacked as error in petitioners' original brief filed in the Court of Appeals.

As conceded by the majority opinion of the Court below, petitioners requested an instruction at trial submitting the issue of voluntariness to the jury and objected to the instruction given by the Trial Court. Thus, the majority agrees that there is no doubt but that petitioners laid the proper foundation in the Trial Court for challenging on appeal the propriety of the submission of the case to the jury.

In support of their holding, the majority misstates petitioners' original brief filed in the Court of Appeals. As shown in Judge Lay's dissenting opinion, there exists a fundamental discrepancy in the majority opinion's restatement of the constitutional issues raised by the petitioners and those issues **actually** raised by petitioners in their brief. Thus, the majority opinion states that the First Amendment issue was raised as follows:

> "Section 610 is unconstitutional because it abridged appellants' and all union members' First Amendment rights."

However, the proposition **actually** contained in petitioners' original brief was as follows:

> "Section 610, Title 18, U.S.C., **as construed and applied by the Court below**, abridges the defendants' rights as well as the rights of all union members, of freedom of speech, press and assembly and the right to petition the Government for redress of grievances, in violation of the First Amendment." (Emphasis added.)

Thus, as evidenced by petitioners' original brief filed in the Court of Appeals, the real controversy was the

application of § 610, "as construed and applied by the Court below."

The Trial Court's instruction to the jury informed them of the law of the case as it was actually tried. The instruction read:

> "The mere fact that the payments into the fund may have been made voluntarily by some or all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money" (Tr. 2075; A. 1116).

The petitioners' original brief was clearly and explicitly directed to this construction and application of Section 610 by the Trial Court. We submit that the majority's holding that the District Court's instruction was not raised as error by the petitioners in their original brief is to ignore the heart of the matter being litigated. (Judge Lay's dissenting opinion, A. 1168-78).

Even the Government, in its Brief in Opposition filed in this Court, seemingly is in agreement with petitioners. The Government states: "In essence, petitioners' claim reiterates their basic assertion, that Section 610 cannot constitutionally proscribe political activities on the part of the union where such activities are undertaken with the consent of the participants and contributions are not strictly coerced" (p. 18). Thus, the Government in its Brief in Opposition does not contend that petitioners waived the issue. Contrariwise, the Government seemingly recognizes, as did the three dissenting judges, that the argument regarding the District Court's instruction was very much a part of petitioners' basic assertion prior to trial, at trial and on appeal. We submit there was no waiver.

B. **Petitioners directed by Court of Appeals to file Supplemental Brief after original submission of the appeal was set aside.**

The Appellate Court set aside the original submission of the appeal and directed the parties to file supplemental briefs for the benefit of the Court *en banc*. Petitioners specifically questioned the propriety of the instruction in their supplemental brief, asked for a new trial and the Government did not raise the issue of abandonment or non-compliance with the Federal Rules of Appellate Procedure in their brief. (See statement at pp. 43-4, *supra.*)

We submit that assuming *arguendo* that said issue had not been fully raised in petitioners' original brief, the Court of Appeals did grant petitioners the right to file a supplemental brief for the express purpose of presenting their contentions relating to the erroneous instruction. Thus, the provisions under Rule 28(a)(2), Federal Rules of Appellate Procedure, were followed and the issue was briefed with the permission of the Court. This is not a case where a point was not raised or briefed as contended in the majority opinion below. Here, the parties were directed to file briefs; the parties did file briefs and they did **specifically** raise the issue claimed by the majority to have been abandoned, all without government objection.

C. **The majority's holding needlessly required the Court to decide the constitutional validity of Section 610 and failed to recognize the broad congressional power given appellate courts under 28 U.S.C., § 2106.**

The Trial Court refused to instruct the jury that voluntary contributions to a separate Fund are not within the scope of the statute. Clearly, the statute does not proscribe use of voluntary funds. **United States v. UAW**, 352 U.S.

567, 592 (1957); **United States v. C.I.O.**, 335 U.S. 106, 123 (1948). The majority refused to decide whether the Trial Court's instruction was erroneous because they said the instruction itself was not attacked. However, as held in Judge Lay's dissent, "Not until the statute is given its intended construction should we [the Court] weigh the constitutional issues presented [i.e., constitutionality of Section 610]" (A. 1170). Constitutional validity of any statute should not be passed upon until absolutely necessary. **Thorpe v. Housing Authority**, 393 U.S. 268, 284 (1969); **Rosenberg v. Fleuti**, 374 U.S. 449, 451 (1963); **In re Weitzman**, 426 F.2d 439, 454-55 (8 Cir., 1970).

Thus the majority needlessly decided the constitutional validity of Section 610 without the statute being given its intended construction. This was reversible error.

As shown in part "A" of this Argument (*supra*, pp. 127-28), the erroneous instruction was expressly attacked in petitioners' original brief (See footnote 2 in Judge Heaney's dissent, A. 1160). Therefore, basically, the majority opinion holds that although the Trial Court's erroneous construction of the statute was raised on appeal, the petitioners failed to ask for the right relief or remedy (a new trial), and therefore as a consequence, the judgment of conviction must be affirmed. We submit that the Federal Rules of Appellate Procedure were never intended to punish the party for failure to seek the proper relief. Decisions are replete holding that a court of appeals may shape the remedy regardless of the relief sought. See **Turk v. United States**, 429 F.2d 1327 (8 Cir., 1970); **Neely v. Eby Construction Company**, 386 U.S. 317 (1967). Further, 28 U.S.C., §2106 is good authority that the appellate courts have the power to render an appropriate judgment, decree or order as may be just under the circumstances of the case. The Federal Rules of Appellate Procedure are not concerned with **how** an issue is raised but **what** is raised.

We submit that the majority's opinion holding that a defendant is deprived of any relief from an erroneous conviction merely because he names the wrong remedy in his original brief on appeal is reminiscent of the rigid and rationalized distinctions from the days of code pleading. Such a result is untenable.

D. **Obvious errors which seriously affect the fairness and integrity of a judicial proceeding should be noticed by an appellate court to guard against manifest injustice.**

Assuming fully for the sake of argument that it is reasonable to say that petitioners did not properly attack the Trial Court's construction of the Statute on the original appeal or on the appeal *en banc*, we submit that the majority should have ruled on the correctness of the instruction because of its substantial effect upon the right of the parties. **Harris v. Smith**, 372 F.2d 806, 815 (8 Cir., 1967); **General Finance Loan Co. v. General Loan Co.**, 163 F.2d 709, 711 (8 Cir., 1947); **Lewis v. United States**, 340 F.2d 678, 683 (8 Cir., 1965); **United States v. Achilli**, 234 F.2d 797, 809 (7 Cir., 1956), aff'd 353 U.S. 373 (1957); **Forakis v. United States**, 137 F.2d 581, 582 (10 Cir., 1943).

In **Gros v. United States**, 136 F.2d 878, 880-81 (9 Cir., 1943), reversed on rehearing 138 F.2d 260, the principle is expressed:

> "It is obvious that it is immaterial in a court of justice whether the court *sua sponte* first recognizes and calls attention to a plain error 'absolutely vital to defendants' and that appellant's counsel then urges it, or that counsel first calls the appellate court's attention to the vital error."

See also **Fisher v. United States**, 328 U.S. 463, 467-68 (1946); **Screws v. United States**, 325 U.S. 91, 107 (1945); **McMillan v. New Jersey**, 408 F.2d 1375, 1377 (3 Cir.,

1969); **Garza-Fuentes v. United States**, 400 F.2d 219, 223 (5 Cir., 1968), cert. denied 394 U.S. 963 (1969); **Stephan v. United States**, 133 F.2d 87, 89-90 (6 Cir., 1943), cert. denied 318 U.S. 781 (1943).

We submit that manifest injustice should not take place in a criminal trial and lay beyond the reach of appellate review simply because a lawyer fails to protect the defendant's right in an appellate brief. Under those circumstances, an appellate court should take effective action in these circumstances even where counsel fails to properly preserve the error and should do so as a necessary exercise of judicial responsibility. As this Court has observed:

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." **Hormel v. Helvering**, 312 U.S. 552, 557 (1941).

We submit that the Court of Appeals *en banc* below erred in refusing to rule on the question as to whether the instructions of the Trial Court were incorrect.

CONCLUSION

For the reasons stated herein, and in our petition for writ of certiorari, the petitioners are of the view that the judgment below of the Court of Appeals sitting *en banc* should be reversed. In the alternative, should this Court decide to dispose of this case by ruling only on Argu-

ments II and VIII, *supra*, then petitioners request a new trial on the misdemeanor of which they were convicted. Of course, such request is not a waiver of their acquittal below by the jury on the felony charge. **Price v. Georgia**, 398 U.S. 323, 90 S.Ct. 1757 (1970).

Respectfully submitted

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SEP 3

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, ET AL.,
Petitioners

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR THE AMICI CURIAE IN SUPPORT OF THE PETITIONERS

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In the Supreme Court of the United States

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PIPEFITTERS LOCAL UNION NO. 562, ET AL.,
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v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR THE AMICI CURIAE IN SUPPORT OF THE PETITIONERS

INTEREST OF THE AMICI CURIAE

For the first time in the long history of the criminal prohibition of political contributions and expenditures by certain enumerated groups, the Court has before it a case in which there has actually been a conviction for violation of the prohibition. Called into question in

this case is the meaning and constitutionality of Title 18 U.S.C. § 610. The brief of the amici in this case is filed pursuant to written consent of both the petitioners and the government.

The amici curiae are officers of a major international labor organization, the United Mine Workers of America, which numbers a membership of two hundred thousand. W. A. Boyle is the President and John Owens is the Secretary-Treasurer. The amici curiae presently stand under indictment in the United States District Court for the District of Columbia in one count for allegedly conspiring to violate Title 18 U.S.C. § 610 and in eleven counts for violation of Title 18 U.S.C. § 610 and in a thirteenth count there is an allegation of violation of Title 29 U.S.C. § 501(c). The latter is predicated on the same facts as alleged to support the violation of Title 18 U.S.C. § 610.

The allegations made by the government against the individual petitioners in this case are, in effect, almost identical to those made against the amici curiae, and all of the constitutional questions posed by the petitioners in the course of their defense have been raised by the amici curiae in the United States District Court for the District of Columbia in their own defense. It follows that the resolution of those questions may be dispositive of the action now pending against the amici curiae.

This brief urges the Court not to omit consideration of three issues in reaching its conclusion in this case. They are:

1. The expenditure provision of Section 610 is unconstitutional and the contribution provision of the

same statute is inseparable from the expenditure provision and, therefore, it, too, is unconstitutional and must fall.

2. The Congress never intended by Section 610 to prohibit indirect contributions or expenditures by labor organizations.

3. This statute has been intentionally enforced in a discriminatory fashion and the individual petitioners are in the class arbitrarily, though intentionally, selected by the government against whom this statute would be enforced by the government to the exclusion of others.

ARGUMENT

INTRODUCTION

The legal issues before the Court spring from a factual setting in which the individual petitioners are accused of conspiracy to consent to the making by a labor organization of political contributions in connection with federal elections. The *sine qua non* of the alleged crime is the individual petitioners' status as labor union officers and their conspiracy to consent while acting in their respective labor organization capacities. Thus, if the petitioners agreed to consent to political contributions while in roles other than their roles as labor organization officers, the offense alleged is illusory.[1]

---

[1] Officers of national banks and corporations are also by the express language of the statute prohibited from consenting to political contributions in federal elections.

I.

TITLE 18 U.S.C. § 610'S BAN ON UNION POLITICAL "CONTRIBUTIONS" IS NOT SEPARABLE FROM ITS UNCONSTITUTIONAL PROHIBITION OF UNION POLITICAL "EXPENDITURES"

This portion of the argument will first assume arguendo that there is sufficient evidence to justify a finding that the individual petitioners conspired to consent to a "contribution" constituting a violation of Section 610. Further, it is assumed arguendo that Congress has the power under the Constitution to prohibit associations of workingmen through their officers from making political "contributions" in connection with federal elections. Accepting these premises, it is nonetheless maintained: (1) the companion prohibition in Section 610 against an "expenditure" by labor unions in connection with federal elections is unconstitutional; (2) the two prohibitions in Section 610, the one banning "contributions" and the one outlawing "expenditures", are not separable; that is, Congress did not intend that one ban remain in force should the other be held unconstitutional; and (3) the petitioners, even though arguably not charged with violating the "expenditure" provision, are entitled to challenge its constitutionality, since the effect of such a successful challenge would render inoperative the "contribution" provision.

A. The Doctrine of Separability

Petitioners rest the second and third points of this argument upon the principle of statutory construction known as the doctrine of separability or severability. Mr. Justice Brandeis summarized this doctrine as follows:

> A statute bad in part is not necessarily void in its entirety. Provisions within the legislative

> power may stand if separable from the bad. But a provision, inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it; and that the legislature intended the provision to stand, in case others included in the act and held bad should fall. *Dorchy* v. *Kansas*, 264 U.S. 286, 289-90 (1924)

Section 610 by its terms prohibits a labor union from making either "a contribution or expenditure" in connection with a federal election. Absorbing the provisions of this statute into the Brandeis formulation of the doctrine of separability to this statute, one reaches the following conclusion: Section 610, if bad in part, *i.e.*, with respect to its ban on union political "expenditures" during federal elections, is not necessarily void in its entirety. The provision in Section 610 against a union political "contribution", if itself within the legislative power, may stand if separable from the bad. But the provision against "contributions", even if inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it; and that the legislature intended the provision against "contributions" to stand, in case the "expenditure" provision in the statute be held bad and thereby fall.

B. Standing To Attack Constitutionality of Expenditure Ban

Since the petitioners are charged with a conspiracy in violation of the "contribution" provision, and since that prohibition is coupled with the ban on "expenditures" in a single statute, they have standing to challenge the constitutionality of the "expenditure" provision provided they can establish that Congress did not intend the "contribution" prohibition to survive

the death of its statutory companion. The petitioners have such standing because if indeed the "expenditure" ban is both unconstitutional and inseparable from the "contribution" provision, then the prohibition on political "contributions" is a nullity, and the petitioners are not to be prosecuted for conspiring to consent to such contributions.

> [T]he principle that the constitutionality of an act may not be raised by one not affected by the invalid part does not apply when the entire act, by which he is affected, is rendered unconstitutional by reason of the part which is void. *McFarland* v. *City of Cheyenne,* 48 Wyo. 86, 42 P.2d 413, 416 (1935).

That one making a separability argument has standing to bring into question provisions of a statute other than those being applied to him was recognized by this Court in *Champlin Refining Co.* v. *Corporation Commission,* 286 U.S. 210 (1932). The statute there in question created a commission with authority to regulate both the *amount* of crude oil produced from wells, and the *price* to be charged for the oil. A refiner resisted the order on the ground that the provisions as to *price* regulation were unconstitutional and not separable from the provisions regulating the *amount* of production. The Court rejected his argument not because he lacked standing to make it, but because upon careful examination of the purposes animating the statute, it was able to conclude that the price-fixing regulations, even if they should prove to be unconstitutional, were separable from the part of the statute that was being applied to the refining company. This ruling implies a recognition on the part of the Court that the refining company did have standing to raise

the issues of the constitutionality and the separability of portions of the statute not actually being applied to it in the particular case. By the same token, it is now submitted that there is in this case standing to challenge the constitutionality of the "expenditure" prohibition in Section 610 provided it can be demonstrated that this provision is not separable from the ban on "contributions".

C. Effect of Separability Clause

One who attacks the validity of a statutory provision by arguments based on the doctrine of separability must dispose of two threshold considerations: (a) Does the statute contain a separability clause, *i.e.*, a provision that if one part of the statute is declared invalid, the remaining provisions shall not be affected by such holding? (b) What is the impact of the presence *or* the absence of such a clause upon the applicability of the doctrine to that statute? First, we attend to these preliminary questions.

Section 610, as it now reads, was enacted as part of the Labor Management Relations Act of 1947, the so-called Taft-Hartley Act. Section 503 of that Act provides as follows:

> SEPARABILITY.—If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Notwithstanding the seemingly absolute language of this separability clause, it is very well settled that

neither the presence nor the absence of such a clause is determinative as to the separability issue. In this connection, it is helpful to take note of the observations of a leading authority in the area of statutory construction concerning the impact of a separability clause in cases where part of a statute has been invalidated:

> In the preparing of statutes it is considered good draftsmanship to include in each bill a separability clause .... Because of the very frequency of its presence, the separability clause is regarded as little more than a mere formality. A few courts are derisive: "the act in question contains a saving clause, which it seems customary nowadays to insert in all legislation with the apparent hope that it may work some not quite understood magic."
>
> ... The authority of the court to eliminate invalid elements of an act and yet sustain the valid elements is not derived from legislature, but rather flows from powers inherent in the judiciary. Thus to say that a saving clause is "indisputable evidence" of legislative intent to pass part of an act irrespective of void provisions is to put too great an emphasis on the mechanical inclusions of such provisions within an enactment. Separability clauses should be given reasonable consideration, but should not, at least under present usage, be paid undue homage. 2 Sutherland, *Statutory Construction* § 2408 [3rd Ed. 1943]

On the contrary, as recently as 1968, this Court remarked that "the ultimate determination of severability will rarely turn on the presence or absence of such a clause." *United States* v. *Jackson,* 390 U.S. 510, 585 n. 27 (1968). The presence of such a clause simply places upon one claiming that the provisions of the statute are not separable the burden of demonstrating that he is correct. For example, in *Dorchy* v.

Kansas, 264 U.S. 286 (1924), the Kansas statute before the Court contained a separability clause more strongly worded than the one in the Taft-Hartley Act:

> If any section or provision of this act shall be found invalid by any court, it shall be *conclusively* presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court. *Id.* at 290 n. 2 (Emphasis added).

Nevertheless, Mr. Justice Brandeis observed that the separability clause merely "provides a rule of construction which may sometimes aid in determining that intent. But it is an aid merely; not an inexorable command." *Ibid.*

Later, in *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936), the Court had before it a challenge to a federal statute which established a plan for fixing prices and wages in the coal mining industry. Having first ruled that the price-regulation provisions in the statute were unconstitutional, the Court was faced with the question of deciding whether the provisions regulating wages were separable. The statute contained a separability clause which is virtually identical to the one in the Taft-Hartley Act:

> If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby. *Id.* at 312.

The Court held that this clause did not determine the issue of separability, but simply had the effect of plac-

ing on one attacking the statute the burden of showing the inseparability of the provisions involved:

> In the absence of such a provision, the presumption is that the Legislature intends an act to be effective as an entirety—that is to say, the rule is against the mutilation of a statute; and if any provision be unconstitutional, the presumption is that the remaining provisions fall with it. The effect of the statute is to reverse this presumption in favor of inseparability, and create the opposite one of separability. Under the nonstatutory rule, the burden is upon the supporter of the legislation to show the separability of the provisions involved. Under the statutory rule, the burden is shifted to the assailant to show their inseparability. But under either rule, the determination, in the end, is reached by applying the same test—namely, What was the intent of the lawmakers? *Ibid.*

In that case, the Court held, the separability clause to the contrary notwithstanding, that the provisions regulating *wages* were not separable from the provisions regulating *prices,* and that, therefore, a declaration of the unconstitutionality of the *price* provisions had the side-effect of rendering invalid the *wage* provisions, even should those *wage* provisions be themselves free from any constitutional infirmity.

D. Inseparability of "Expenditure" and "Contribution" Prohibitions

Against the background of the Taft-Hartley Act's separability clause, and the burden which it places upon the petitioners, we now proceed to demonstrate the inseparability of Section 610's provision outlawing union political "contributions" from that proscribing union political "expenditures." One preliminary observa-

tion is appropriate in embarking on this course: Section 610 is a criminal statute. Courts have been noticeably more reluctant to hold provisions severable when they appear in a penal statute than they are to reach such a result when the same provisions appear in a civil statute.

> In keeping with the principle of statutory construction that criminal statutes will be strictly construed against the state, penal statutes will be more often struck down for partial invalidity than purely civil enactments, even though the same rules of construction are followed in handling both types of legislation. Sutherland, *Statutory Construction* § 2418 (3d Ed. 1943)

The test for resolving the question of the separability *vel non* of these two statutory terms is to suppose that while Section 610 was pending in Congress, an attempt to strike out the ban on union political "expenditures" had prevailed, and then to inquire whether in that event, the conclusion can be justified that Congress, notwithstanding, probably would have enacted the ban on union "contributions" alone. This is the approach to the issue of severability recommended by this Court in *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 313 (1936). It is submitted that an examination of the internal structure of the statute; the definitions assigned by Congress to the two terms under consideration; the purpose of the legislation itself; and the legislative history of Section 610 compels the conclusion that the ban on union political "contributions or expenditures" is a unit proposition; that, in other words, these twin provisions are "like the interwoven threads constituting the warp and woof of a fabric, one . . . of which cannot be removed without fatal con-

sequence to the whole." *Carter* v. *Carter Coal Co., supra,* at 315-16.

E. Structure of Statute Indicates Inseparability

First, we advert to the internal structure of the statute itself. It will immediately be noted that the ban on contributions is not found in one section of the Taft-Hartley Act, with the prohibition on expenditures being in another. Nor do we find within Section 610 the two prohibitions being placed in separate subdivisions. Instead, the proscription of "'contributions" is separated from that on "expenditures" by but a single word. It is not suggested, of course, that the failure of Congress to place these two provisions in separate sections or in separate subdivisions points inexorably to the conclusion that they are inseparable. On the other hand, we do insist that it is one pertinent factor working in favor of the contention that the terms are closely integrated.

F. Language of Statute Indicates Inseparability

Second, we look at the meaning which Congress itself assigned to these two words in order to see what light that congressional meaning casts on the extent to which the legislators themselves thought that the conduct they were aiming at was divisible. Each of these terms is defined in Title 18 U.S.C. § 591. The term "contribution" is defined as follows:

> [A] *gift,* subscription, *loan, advance,* or *deposit,* of *money,* or *anything of value,* and includes a *contract, promise or agreement* to make a contribution, whether or not legally enforceable. (Emphasis added).

The term "expenditure" receives the following definition:

> [A] payment, distribution, *loan, advance, deposit* or *gift,* of *money,* or *anything of value,* and includes a *contract, promise or agreement* to make an expenditure, whether or not legally enforceable. (Emphasis added).

One has only to read these two definitions to see that they overlap almost to the point of congruency. The only item present in the definition of the term "contribution" that is not duplicated in the definition of "expenditure" is "subscription". The only items present in the definition of the term "expenditure" not duplicated in the definition of "contribution" are payment" and "distribution". Approached another way, one who makes a "gift" of money or anything of value in connection with a federal election can be said to have made both a "contribution" and an "expenditure". One who makes a "loan" of money or anything of value in connection with a federal election can be said to have made both a "contribution" and an "expenditure". One who makes an "advance" of money or anything of value can be said to have made both a "contribution" and an "expenditure". One who makes a "deposit" of money or anything of value will be making at one instant both a "contribution" and an "expenditure". Finally, one who makes a "contract, promise or agreement" to make either a gift or a loan or an advance or a deposit of money or anything of value will find himself within both the definition of "contribution" and the definition of "expenditure." Under the circumstances, it is evident that the Congress itself regarded these terms as having a heavy degree of overlap, and for a court to undertake to separate them is in light of the statutory definition to

embark upon an effort to unscramble two scrambled eggs. As one writer put it in a thoughtful law journal comment:

> [18 U.S.C. § 591] defines 'contribution' and 'expenditure' in such a way as to make differentiation almost impossible. Both expenditures and contributions are referred to as gifts, loans, advances, deposits of money or value, and contracts, promises or agreements to make them. The only word exclusively characterizing a "contribution" is "subscription"; the exclusive words for "expenditure" are "payment" and "distribution". Comment, *Section 304—Taft-Hartley Act: Validity of Restrictions on Union Political Activity.* 57 Yale L.J. 806, 812 n. 22 (1948)

G. The Legislative History of the Statute Indicates Inseparability

The conclusion that the prohibition of the union political "contribution" is statutorily inseparable from that on union political "expenditures" is reinforced by an examination of the legislative history pertaining to Section 610. Although the ban on political contributions by corporations had been in force since 1907, it was not until 1943, with the passage of the War Labor Disputes Act (popularly known as the Smith-Connally Act) that the prohibition was extended to contributions by labor unions. [57 Stat. 163, 167-8 (1943)]. Two scholars, who have studied the legislative history of the Smith-Connally Act have noted that the inclusion in it of a prohibition against union political contributions was in the nature of a last-minute insertion which received only the most cursory legislative consideration:

> The circumstances under which the limitation upon trade union contributions was included in this Act are discouragingly reminiscent of the in-

clusion of campaign fund ceilings in the Hatch Act. Again, the provisions were not germane to the main purpose of the bill which purportedly at least, was an emergency measure aimed to prevent strikes in wartime . . . .

Considering the complexity of the problems involved and the heat and confusion attending the passage of the Smith-Connally Act, it is not surprising that this particular provision should not have been singled out for special consideration. When the Senate bill came to the House, Representative Harness moved an amendment which was in effect a substitute bill. The provision dealing with trade union contributions was included therein. Lost in a bewildering array of amendments to the amendment, some of which passed and some of which were defeated, few members had a very clear idea of what was and was not in the bill when it came to a vote . . . . The provision affecting political contributions was included in the Conference Committee report without supporting argument or explanation. Overacker, *Presidential Campaign Funds* 55-57 (1943).

During House deliberations upon this measure [the Smith-Connally Act] which had already passed to the Senate, Representative Harness, of Indiana, offered a substitute for the bill as reported from committee, one feature of which was a proposal to add "labor organizations" to the section of the Federal Corrupt Practices Act of 1925 prohibiting political contributions by corporations. The Harness substitute, with this feature included, was accepted by the House and by the joint conference committee to which the bill was then referred. Kallenbach, *The Taft-Hartley Act and Union Political Contributions Expenditures,* 33 Minn. L.R. 14-15 (1948).

The entire Smith-Connally Act, including this ban on labor contributions, was limited to expire six months

after a presidential declaration that World War II had terminated. Accordingly, the 1943 prohibition on labor union contributions obviously did not involve any decision on the part of Congress that such contributions should be permanently barred. Indeed, the fair conclusion to be drawn from the legislative history at this point is that in 1943, without any hearings or committee consideration directed to the subject, the House hastily adopted, and the Senate acquiesced in, a temporary ban on political contributions as part of a package of wartime curbs on labor unions. Certainly there is nothing in the background of the 1943 prohibition which reveals a legislative intent that union political contributions be permanently barred.

The temporary ban in 1943 on labor union political contributions, coupled with the presidential election held the following year, provided Congress with an opportunity to observe just how effective such a legislative approach was likely to be in accomplishing the purposes behind the statute. The Senate created the "Special Committee to Investigate Campaign Expenditures in 1944." This Committee found that labor organizations, while adhering strictly to the letter of the prohibition against political "contributions", were nonetheless spending large sums of union money for the purpose of influencing federal elections. The committee noted that the C.I.O. had advised its member unions as follows concerning the reach of the new prohibition on union contributions:

> Counsel advises us that the law does not prohibit a labor organization . . . from spending moneys in connection with its own activities, undertaken for the purpose of advancing the cause of one or more candidates for Federal Office, provided that

> this money is spent directly by a labor organization and not pursuant to an agreement or pre-arrangement with these candidates, their political activities or committees. Thus, the [C.I.O.-P.A.C.] is prohibited from making any contribution to a candidate for a federal office or to his political party or political committee, to be used to forward his candidacy. The Committee may, however, continue to engage in its general political and educaitonal activity and, through the distribution of leaflets, the holding of meetings of members of organized labor and the general public, the use of radio time, etc., forward the candidacy of such persons as it may endorse for Federal Office. Quoted in Senate Report No. 101, 79th Cong., 1st Sess., p. 22.

The majority of the Special Committee made the following non-committal comment about the practice of labor unions making expenditures instead of contributions during the federal elections:

> The special committee found no clear-cut violation of the Corrupt Practices Act on the part of the [C.I.O.-P.A.C.] . . . . Inquiry into the affairs of the Political Action Committee emphasized two *outstanding facts which enabled the committee to function within the law; namely,* (1) The Federal Corrupt Practices Act by expressed limitation, has no application to primary elections; (2) section 313 of *the Corrupt Practices Act prohibits a labor union or a corporation from making a "contribution" in connection with a Federal election, but it does not extend the ban to "expenditures".* Id. at 23. (Emphasis added).

Two members of the committee, in a minority comment, took the position that the failure of the statute to prohibit "expenditures" as well as "contributions"

had created a loophole which largely frustrated the purpose of the statute:

> Senators Ball and Ferguson, believing that use of union funds to support a particular candidate or course of political action is wrong in that it opens the way for the use of money paid in by individuals for political action which they, as a minority would oppose, believe *the Federal law should be clarified so that the prohibition* on use of such union funds *would apply* to primary elections and political conventions and *to expenditures as well as contributions by unions.* Id at 24. (Emphasis added).

The House of Representatives also created a special committee to investigate campaign expenditures, this committee focusing on those made during the congressional election of 1946. It too found that the prohibition on contributions was easily circumvented.

> There is evidence before the committee that *some organizations which are prohibited from making contributions* in a political campaign *have made expenditures* and have engaged in activities the purpose of which were to endeavor to influence the election or defeat of candidates.
>
> It is noted that *the act prohibits contributions and does not expressly prohibit expenditures.* It is reported to the committee that a former Attorney General had issued a ruling to the effect that the activities above-mentioned do not constitute the making of contributions. It is conceivable that *the word "contribution" might imply a giving on one hand and accepting on the other; yet from the study of the history of this provision of the act, the committee feels that the activities hereinabove referred to,* which are carried on on an extensive scale, *constitute violations of the spirit and intent*

of the act. House Report No. 2739, 19th Cong. 2d Sess., p. 39-40. (Emphasis added).

The special committee then made an observation which is very pertinent to determining whether Congress would intend that the ban on contributions stand in the event expenditures were not and could not be prohibited:

> The *intent and purpose of the provision* of the act *prohibiting* any corporation or labor organization making *any contribution* in connection with any election *would be wholly defeated if it were assumed that the term* "making any contribution" related only to the donating of money directly to a candidate, and *excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would the law be to prohibit the contributing direct to a candidate and yet permit the expenditure of large sums in his behalf?* Id. at 40. (Emphasis added).

At the same time, the Special Committee to Investigate Senatorial Campaign Expenditures 1946 was making similar observations and recommendations:

> Section 313 of the Federal Corrupt Practices Act of 1925 as amended applied only to "contributions". Experience has shown that some corporations and labor unions have spent money directly on behalf of a political party or candidate and that the applicability of the prohibition upon contributions has in consequence been denied. . . . [S]pecific *extension of the prohibition to include a prohibition upon "expenditures" will plug the existing loophole* whereby corporations, national banks, and labor *organizations are enabled to avoid the obviously intended restrictive policy of the statute by garbing their financial assistance in the form of an "expenditure" rather than a contribution.* Senate

Report No. 1, Part 2, 80th Cong., 1st Sess., p. 38-39. (Emphasis added).

It seems quite plain from a reading of the foregoing excerpts from the reports of the various congressional committees which examined the efficacy of the ban on labor political contributions that the statute was regarded as ineffective unless and until it could be broadened to prohibit corporate and labor political expenditures as well.

H. The Purposes of the Statute Indicate Inseparability

A consideration of the goals which Congress sought to achieve by Section 610 confirms that the twin bans on contributions and expenditures are too closely linked to survive a severance.

It is generally conceded that the initial ban on union political contributions was designed to serve two purposes. First, Congress sought to eliminate the extent to which corporations and labor unions could use their large financial resources to influence the outcome of federal elections. Second, Congress was concerned for those shareholders and union members who saw the general treasury of these organizations, to which they had contributed and in which they had a financial stake, being depleted for the purpose of promoting political candidates, issues, ideas and programs with which these minority members did not agree.

> It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose. *United States* v. *C.I.O.*, 335 U.S. 106, 115 (1948).

A ban on union political contributions which is not coupled with a parallel ban on union political expenditures serves little or no purpose in accomplishing either of these twin legislative goals.

As far as the undue influence which labor unions might exert upon the outcome of federal elections by use of their large financial resources, such influence is hardly minimized by a statute which prohibits a union from contributing the $5,000 maximum which others are allowed to contribute to a political candidate (*see* Title 18 U.S.C. § 608); and at the same time leaves the union free to spend hundreds of thousands of dollars to purchase advertising space in the various media to promote the election of that same candidate.

By the same token, the purpose of protecting minority members of a union from having its resources used to promote political candidates and programs with which they do not agree is hardly served by requiring the union, instead of giving a candidate a certain sum of money to purchase advertising space, to purchase that advertising space itself to promote the very same candidacy, and thereby to associate even more directly and dramatically the union itself with the candidate and his programs.

As noted earlier, in *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936), the Supreme Court suggested the following test for determining the separability of provisions of the statute, one of which had been held unconstitutional: if when the statute was pending before Congress an attempt to strike from the bill the provision now ruled to be constitutionally infirm had been made and carried, would Congress have proceeded to enact the remainder of the statute? The legislative history leading up to Section 610 demonstrates beyond

question that Congress looked upon the ban on union political contributions standing alone as ineffective to achieve its legislative purposes. With this in mind, is it not probable that had Congress realized that the ban on expenditures, which it deemed necessary to plug the loopholes in the existing law, would itself be unconstitutional, it would then have explored other and quite different legislative avenues for achieving its purposes? For example, with respect to the goal of reducing the influence of the union and corporate money upon federal elections, Congress might have given very serious consideration to tightening up the prohibition in Section 608 (itself already applicable to the unions and corporations) placing a $5,000 ceiling on contributions, while at the same time requiring some form of pre-election disclosure of any large contributions made to a candidate during the course of his campaign for federal office.

With respect to the congressional concern for dissident union members, Congress might have considered a statute along the lines of that in force in Great Britain, which both requires that unions spend money for political purposes only when a majority of the union members so authorize and, at the same time, permits any individual union member to "contract out", *i.e.*, exempt himself from financial support of his union's political endeavors by filing a written notice. See *Regulation of Labor's Political Contributions and Expenditures: the British and American Experience*, 19 U. Chi. L.R. 371, 381-84 (1952).

It is, of course, difficult to divine at this distance in time just what course Congress would have traveled in 1947 if it had realized that a ban on labor's political expenditures would run afoul of the Constitution. It

is possible (although a fair reading of the legislative history makes it seem improbable) that Congress would nonetheless have made permanent the temporary, and easily evaded, wartime ban on union contributions. On the other hand, it seems much more likely that Congress would have given careful consideration to a pattern of statutes which would have effectuated its concern to curb the undue influence of union funds on elections and at the same time protect minority members from coerced financing of political views contrary to their own. This sort of uncertainty as to Congress' intent is precisely the occasion for use of the doctrine of inseparability. By ruling that there is a vital link between Congress' desire to prohibit union contributions and its desire to prohibit union expenditures; and by declaring that the unconstitutionality of the latter effectively annuls the adoption of the former, this Court would be rendering a decision that would both permit and promote a highly desirable reconsideration of labor's role in federal elections by a Congress now operating with more guidance with respect to the permissible area of regulation left open to it by the Constitution.

I. "Expenditure" Ban in Section 610 Is Unconstitutional

Having demonstrated that the ban in Section 610 upon union political contributions is inseparable from that on union political expenditures, it remains to be established that the latter prohibition is unconstitutional. In *United States* v. *U.A.W.*, 352 U.S. 567 (1957), the Supreme Court ruled that the expenditure provision of Section 610 would be violated by the action of a labor union in purchasing television time for the purpose of advocating the election of a particular candidate to federal office. However, a ma-

jority of the Court expressly declined to rule upon whether the statute, so construed, violated the guaranties of free speech and assembly protected by the First Amendment. *Id.* at 589-93. Three members of the Court, Chief Justice Warren and Justices Black and Douglas, felt that the constitutional issue was ripe for decision, and they took the position that a statute which prohibited a union from expending money in order to express its views concerning a candidate for federal elective office was an unconstitutional abridgement of the rights of free speech and assembly. *Id.* at 593-98.

Although the decision in the *U.A.W.* case left open the constitutional question, it did make clear that Section 610 did impose restraints upon the expression of political opinion by labor unions. In other words, the unions are not to expend any money whatsoever where their primary purpose is to speak to the public at large about organized labor's views on political issues and candidates. Does Congress have power under our Constitution so to restrict associations of laboring men from addressing the public?

The decisions of the United States Supreme Court in area of the First Amendment guarantees have always recognized a very special status for speech which expresses political views. In *Stromberg* v. *California,* 283 U.S. 359, 369 (1931), the Court stated:

> The *maintenance of the opportunity for free political discussion* to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, *is a fundamental principle of our constitutional system.* (Emphasis added).

This same view was reiterated in *DeJonge* v. *Oregon*, 299 U.S. 353, 365 (1937):

> [T]he more *imperative is the need to preserve inviolate* the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for *free political discussion*, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. (Emphasis added).

James Madison, a few years after the beginnings of our government, stressed the importance of guarding against any legislation which "is levelled against *that right of freely examining public character and measures, and of freely communicating thereon*, which has ever been justly deemed the only effectual guardian of every other right." IV Elliot, Debates on the Adoption of the Federal Constitution 561. (Emphasis added).

Because of this great concern for preserving freedom of political expression, any statute which restricts that freedom should receive the utmost scrutiny by the courts.

> In every case, therefore, where legislative abridgment of the [First Amendment] rights is asserted, the courts should be astute to examine the effects of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. *Schneider* v. *New Jersey*, 308 U.S. 147, 161.

The prohibition on union political expenditures, as construed by the Supreme Court in the *U.A.W.* case, prohibits payments by unions to television stations, radio stations, newspapers and magazines to disseminate a labor union's views on political candidates and issues. Moreover, the statute would appear to interdict all other expenditures of a political nature by a union, such as those for holding public gatherings in support of a candidate, getting out the vote for a particular candidate, printing and distributing placards and campaign literature and purchasing billboard space. Yet each of these activities engaged in by anyone constitutes an exercise of speech; some of these activities employ the press; and all of them, when utilized by a group of organized workingmen involves a form of assembly. None of these activities can be carried on in a meaningful way without some expenditure. Therefore, the statute is nothing more or less than a prohibition on workers assembling, speaking and publishing their political views concerning issues and candidates during federal elections. Not only does this statute curtail the political rights of workingmen gathered together in a union, but also it impairs the correlative rights of their fellow citizens, the general public, to hear and be informed about the position of organized labor with respect to these candidates and issues. The statute then dramatically poses the question of whether workingmen have a constitutional right to act *through their labor unions* in the political field to protect their collective rights. Congress evidently thinks not, even though it must recognize that the choice of candidates at any particular federal election may well determine whether the rights and interests of laboring men will be secure or will be destroyed.

As the Petitioners brief to the Court of Appeals pointed out, a candidate may favor the repeal of the Taft-Hartley Act; the Landrum-Griffin Act; and the outlawing of Right-to-Work laws. The same candidate may favor a higher minimum wage and a law forbidding discrimination in employment. If he does, associations of businessmen are free to spend money to bring about the defeat of the candidate. This is as it should be! On the other hand, associations of workingmen may not spend a single penny to express their support of this candidate. This is neither as it should be, nor as it may constitutionally be!

Another candidate may favor applying the anti-trust laws to unions; the enactment of a Federal Right-to-Work statute; as well as added restrictions on labor's political activities. Again, associations of business and professional men are free to spend money to elect such a candidate, whereas a labor union may be guilty of a felony if it spends a single penny to express the collective opposition of the majority of its members to the election of such a candidate. To state the situation is to condemn it from a constitutional standpoint.

A mere recital of the types of activities which Section 610 prohibits should be sufficient to alert anyone concerned with the civil liberties of free speech, free press and free assembly to the unconstitutionality of the statute. The very idea that a union commits a felony by purchasing television time to inform the public of its position with respect to a particular candidate; or the notion that a union violates the law when during the course of a federal election campaign it purchases advertising space to indicate its endorsement or disapproval of a particular candidate

—each reveals that Section 610 involves precisely the kind of muzzling of political views which the First Amendment rights are designed to prevent.

A quick review of some of the statutes which the Supreme Court has held violative of First Amendment rights establishes *a fortiori* the unconstitutionality of the restraint on speech involved in Section 610. For example, it is unconstitutional for a state to impose a licensing tax on the privilege of engaging in the business of selling advertising where a newspaper or magazine has a weekly circulation of more than 20,000 copies. *Grosjean* v. *American Press Co.*, 297 U.S. 233 (1936). It is unconstitutional for a city to prohibit the distribution of literature without permission from the City Manager. *Lovell* v. *Griffin*, 303 U.S. 444 (1938). It is unconstitutional for a city to prohibit a person distributing handbills and similar literature from ringing the doorbell or otherwise summoning a resident to the door. *Martin* v. *Struthers*, 319 U.S. 141 (1943). It is unconstitutional for a state to require labor union organizers to register with its Secretary of State and to secure an organizer's card before soliciting members within the state. *Thomas* v. *Collins*, 323 U.S. 516 (1945).

If the above restraints on political expression run afoul of the Constitution, it would certainly seem that a statute which prevents a labor union from using its financial resources to enable large numbers of people to hear its message of opposition to or support for a candidate for a federal elective office cannot survive constitutional scrutiny. Here Congress has undertaken to prohibit totally the expression of political views in pending elections by all the great labor unions of the land. In one legislative stroke the

primary organized representatives of millions of laboring men and their families are denied the power of persuasion in the protection of their own interests and those of their members.

The Supreme Court has been at great pains to protect, and properly so, the right to express extremist political views by those on the lunatic fringes of our society. The First Amendment is a hollow collection of guarantees, indeed, if it means that only speech which no one is likely to pay attention to is constitutionally protected; if speech which is likely to be effectual, which is likely to persuade people to the viewpoint it espouses, may be absolutely prohibited. If *organized persuasion at polling time,* and this is really what is involved with union political expenditures, is indeed a political practice that can be made felonious, then the historic decisions of the Supreme Court in the First Amendment area have served to make it not a great bastion which preserves our institutions, but merely a haven for socially doubtful and politically ineffective thoughts and expressions.

Efforts to save Section 610 from constitutional attack generally take the approach that the First Amendment rights are not absolute and that they must be balanced against other equally legitimate governmental concerns. Certainly, however, one who takes this tack should be required to justify a proscription of political expression by the very clearest showing of the need for the particular legislation. This simply is not possible as far as Section 610 is concerned. One of the concerns which is attributed to Congress by the enactment of the ban on labor union political expenditures is the desire to keep federal elections free from undue influence on the part of labor organi-

zations. The problem with this argument is that no evidence has been or can be adduced to show that labor unions have in fact spent a disproportionately high amount in connection with elections. On the contrary, labor's expenditures run far below its proportionate share based on voting population. This very point appears from the congressional investigations preceding enactment of Section 610. In the reports of the four Congressional committees between 1944 and 1947 which studied union political expenditures there is neither a single word nor suggestion of *disproportionate* or *undue* union expenditure or influence. (S. Rep. No. 101, 79th Cong., 1st Sess.; H. Rep. 2093, 78th Cong. 2d Sess.; S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess.; H. Rep. No. 2739, 79th Cong., 2d Sess.) Far from indicating undue influence, the committee reports prior to 1947 actually indicate the contrary: that labor organizations enjoy disproportionately little financial influence on federal elections. For example, the Green Committee which studied expenditures in connection with the 1944 elections, found that labor's expenditures accounted for only 7% of the total political expenditures made during that year. At the same time, it discovered that sixty-four family groups made *direct* political *contributions* (which labor was prohibited from making and to all intents and purposes did not make) in an amount which was only $325,000 less than the expenditures which labor had made on behalf of the many millions of workers comprising its membership. There is no showing, either legislative or otherwise, nor can there be, that labor unions were ever in a position to exercise disproportionate or undue influence on federal elections. On the contrary, labor's political expenditures run far below its proportionate share based on voting

population. This less-than-proportionate, rather than excessive, participation is hardly an evil requiring correction by a complete prohibition of labor union political activity. Indeed, true respect for our fundamental democratic processes would seem to require that labor union participation in political processes be encouraged rather than restricted.

The major justification for an enactment such as Section 610 is that the statute protects the minority of union members who might object to the support of a particular candidate and whose funds, in form of union dues, are being used for such support. It is submitted that this is not a sufficient justification for a statute of this type. First of all, labor union activity is of necessity group activity, and this requires some submersion of individual viewpoints to positions taken by the majority of the group. Labor unions are associations of individuals operating on the principle of majority rule. The Supreme Court has held that majority rule is "a rule that is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions." *N.L.R.B.* v. *A. J. Tower Co.*, 329 U.S. 324, 331 (1946). Over the past generation, the need for labor's participation in politics has been accentuated by the increased extent to which actions of government affect the economic life of every segment of the population. The same considerations which underlay the trade union movement, those realities which required helpless individuals to take concerted action against the powerful employer now require the individual venturing into the political arena to associate with others in order to achieve that representation and promote those political views which in turn protect his own

economic interest. Unions must act politically with their organized strength to insure that their views will receive an adequate hearing from the public and from those who make legislative and executive policy. In order to accomplish these goals, the labor union must be free to subordinate individual dissenting views of its members to the overall viewpoint of the union itself.

Moreover, even if it be conceded that the right of assemblies of workingmen to express their bloc political views must on balance yield to the desire of Congress both to preserve the federal elections from the influence of the large union financial resources and to protect individual dissenting members of the union from contributing indirectly to political causes with which they do not agree, this would not justify the blunderbuss type of prohibition one finds in Section 610. The Supreme Court has always insisted that legislation impinging on First Amendment rights must be narrowly drawn to deal with the precise evil which the legislature seeks to curb. *Burstyn, Inc.* v. *Wilson,* 343 U.S. 495, 504 (1952); *Wieman* v. *Updegraff,* 344 U.S. 183, 190-91 (1952); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940); *Schneider* v. *New Jersey,* 308 U.S. 147 (1939); *DeJonge* v. *Oregon,* 299 U.S. 353 (1937).

The broadside interdiction of political activity which Section 610 imposes cannot be said to be an appropriate manner in which to deal with the supposed evil of labor's political activities. If the evils at which Section 610 is aimed are those which have been suggested—undue influence of labor union money, impurity of elections, and disregard of minorities in the union—Section 610 on its face is simply not drawn with the narrowness required for it to pass muster

under the Constitution. This is true because it is a statute which *prohibits altogether, rather than regulates.* It is further true because it is a statute which *prohibits irrespective of the presence or absence of the evils* at which it is aimed. The statute applies even to those labor unions where there is complete unanimity with respect to political views. Moreover, the statute does not prohibit *large* expenditures of union money; it prohibits *any* expenditure of union money. It is very difficult to see how the expenditure of $250 to purchase bumper stickers saying: "Re-elect Senator X—Labor's Friend" would bring about undue influencing of the particular election involved. Yet the willful expenditure of or conspiracy to expend $250 to print and distribute such a bumper sticker would be a felony under Section 610.

As Justice Douglas put it in his dissent in the *U.A.W.* case:

> When the exercise of First Amendment rights is tangled with conduct which government may regulate, we refuse to allow the First Amendment rights to be sacrificed merely because some evil may result. Our insistence is that the regulatory measure be 'narrowly drawn' to meet the evil that the government can control. . . . '[T]he legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed.' 352 U.S. at 596-7

Justice Douglas went on to note that there are alternative methods available for protecting dissident or minority union members from seeing their dues used to promote political views with which they do not agree. These ways would not involve, as Section 610 does, prohibiting the majority members of the union from

using union funds to promote labor's candidates and issues. The defendant would conclude by echoing the view of the three justices in the *U.A.W.* case who reached the constitutional issue that Section 610, at least with respect to its expenditure prohibition, "is a broadside assault on the freedom of political expression guaranteed by the First Amendment." 352 U.S. at 598.

Since, as was demonstrated, this unconstitutional ban on expenditures cannot be separated from the companion prohibition on contributions, the latter should fall with the former. In this way, Congress, now aware that the Constitution protects the right of unions to expend money to express political views, can reassess the various constitutional ways by which any undue influence upon elections by labor unions can be prevented and rights of minority labor union members can be protected. It may very well be that when Congress realizes that unions are constitutionally entitled to make "expenditures" from their treasuries to promote the election of candidates, it will decide that there is no point in a statute prohibiting them from making a "contribution" to the election of a candidate. Congress might then explore other ways of preventing against the evil of undue labor union influence, such as tightening up the ceiling on such contributions and expenditures; and requiring extensive and immediate disclosure of all expenditures and contributions.

II.

"INDIRECT" CONTRIBUTIONS IN CONNECTION WITH A FEDERAL ELECTION, WHICH IS THE NATURE OF THE CONTRIBUTIONS ALLEGED IN THE INDICTMENT, ARE NOT WITHIN THE PURVIEW OF TITLE 18 U.S.C. § 610.

Even when one resolves all ambiguities in favor of the government, the indictment does not charge a conspiracy by the petitioners to make or consent to a "direct" contribution to any of the federal election campaigns enumerated. A conspiracy to consent to a direct contribution would involve the payment of money out of the general treasury of the Union to an individual or the campaign committee of some individual standing for federal office. The indictment in this case does not charge that type of contribution; on the contrary, the Government is at pains in the indictment to emphasize the indirect and circuitous nature of the method by which contributions were to be made.

Specifically, it is alleged that the petitioners established, not a union fund, but "a special fund entitled 'Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund' ", hereinafter "the Fund". It is also alleged that the Fund was administered by the individual petitioners. Sums donated by individuals, within and without the union membership, then reposed in the accounts of the Fund for an indefinite period of time and were from time to time drawn upon by checks payable to unspecified persons. The alleged contribution by the union to any individual campaign committee was at least a four-step procedure: funds passed (1) from the contributor to an agent for the Fund; (2) from the agent to an individual petitioner; (3) from a petitioner to

the Fund bank account; (4) from the Fund account to the particular campaign committee involved.

The circuitous route traveled by this money leads to the inquiry as to whether a contribution which is made in such a roundabout way is prohibited by the statute. The language of Section 610 which is pertinent to this inquiry is the following:

> It is unlawful for . . . any labor organization to make a contribution or expenditure in connection with any [federal] election . . . .

Of course, if the statute read as follows: "It is unlawful for . . . any labor organization to make *directly or indirectly* a contribution or expenditure in connection with any [federal] election", there would be no question as to whether the statute covers situations where the money is routed through other organizations or individuals. For example, in *Judd* v. *Board of Education,* 278 N.Y. 200, 15 N.E. 2d 576 (1938), the Court of Appeals construed a statute which banned financial aid "directly or indirectly" to support parochial schools. It made the following comment concerning the effect of that phrase:

> The wording of the mandate is broad. Aid or support to the school "directly or indirectly" is proscribed. The two words must have been used with some definite intent and purpose; otherwise, why were they used at all? Aid furnished "directly" would be that furnished in a direct line, both literally and figuratively, to the school itself, unmistakeably earmarked and without circumlocution or ambiguity. Aid furnished "indirectly" clearly embraces any contribution, to whomsoever made, circuitously, laterally, disguised, or otherwise, not in a straight, open and direct course for the open and avowed aid of the

> school, that may be to the benefit of the institution or promotional of its interests and purposes. How could the people have expressed their purpose in the fundamental law in more apt, simple and all-embracing language? Id.

Since the conspiracy to violate Section 610 charged by the Government in the indictment in this case does not involve a conspiracy to make a "direct" contribution to any political campaign, and since the statute does not expressly ban "indirect" contributions, the Court is confronted with the problem of deciding whether the statute should be interpreted to embrace both types of contributions. It is submitted that every applicable principle of statutory construction calls for a negative answer to this question.

First of all, it is settled that penal statutes should be strictly construed and, especially where substantial rights are involved, be given any reasonable interpretation which favors the defendant. *C.I.R.* v. *Acker,* 361 U.S. 87 (1959); *Smith* v. *United States,* 360 U.S. 1 (1959); *F.C.C.* v. *American Broadcasting Company,* 347 U.S. 284 (1953). There is a strong policy against extending via interpretation the reach of a criminal statute:

> Criminal statutes should be given the meaning their language most obviously invites. Their scope should not be extended to conduct not clearly within their terms. *United States* v. *Williams,* 341 U.S. 70 (1951).

Secondly, there is the principle that a statute, especially a criminal statute, where susceptible of two or more interpretations, should be given the interpretation which is the safer from a constitutional

standpoint. A criminal statute which is so vague and indefinite that it leaves one with reasonable doubts as to its applicability to his projected conduct is unconstitutional.

> The rule that penal statutes are strictly construed establishes a requirement of definiteness which must be met by the legislative draftsmen. Thus, it is not uncommon to find penal statutes declared void for indefiniteness. The words of the criminal statute must be such as to leave no reasonable doubt as to the intention of the legislature, and where such doubt exists, the liberty of the citizen is favored. 3 Sutherland, *Statutory Construction* § 5605.

If Section 610 were intended by Congress to apply to both direct and indirect contributions, then it would seem that the language used is vague and indefinite, and, it would seem, inexcusably so, since the inclusion of the phrase "directly or indirectly" would have prevented any question about the matter.

Thirdly, if the statute were construed to reach indirect as well as direct political contributions, the process by which a court would arrive at such construction is more properly classified as one of interpolation, than of interpretation. In other words, a court would not be construing language in the statute; instead, it would be inserting language into the statute that is not there. As this Court expressed it:

> [O]ur problem is to construe what Congress has written. After all, Congress expresses its purposes in words. It is for us to ascertain—neither to add nor subtract, neither to delete nor to distort. *62 Cases of Jam* v. *United States,* 340 U.S. 593-596 (1951).

> It is our judicial function to apply statutes on the basis of what Congress has written, not what Congress might have written. *United States* v. *Great Northern Railway*, 343 U.S. 562, 575 (1952).

Finally, and most importantly, reference to other statutes where Congress has prohibited the making of political contributions reveals that when Congress wishes to outlaw both direct and indirect contributions it says so in so many words. For example, in Title 18 U.S.C. § 608(a), the provision which creates the $5000 limitation on political campaign contributions, the legislative intent is expressed as follows:

> Whoever, *directly or indirectly*, makes contributions in an aggregate amount in excess of $5000 during any calendar year, or in connection with any campaign or for nomination or election to or on behalf of any candidate for an elective Federal office . . . shall be fined not more than $5000, or imprisoned not more than five years, or both.

In Title 18 U.S.C. § 607, the phrase "directly or indirectly" is also used in connection with political activities:

> Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof *directly or indirectly* gives or hands over to any other officer, clerk, or person in the service of the United States . . . any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

We see then in Title 18 U.S.C. Sections 607, 608 and 610 three federal statutes regulating the making of political contributions. When two of them expressly

prohibit such contributions whether made "directly or indirectly," whereas the third, Section 610, does not contain that phrase, it seems apparent that the latter is intended to be a narrower statute than the first two. Moreover, the presence of the phrase "directly or indirectly" in Sections 607 and 608 shows that Congress was acutely aware of the problem of indirect contributions and knew how to deal with that problem when it wanted to do so. The failure to include that phrase in Section 610, when it had already been included in Sections 607 and 608, clearly indicates that Section 610 is not to be given a meaning which would reach the facts indicated in the indictment in this case. To give it such meaning in face of the language in these two companion statutes is tantamount to an amendment of Section 610 to include the three-word phrase "directly or indirectly" found in Sections 607 and 608.

Section 610 is a penal statute, and it hardly accords with the notion of strict construction to inject into that statute the very meaning which Congress has by the phrase "directly or indirectly" given to two companion statutes. Moreover, the presence of the phrase "directly or indirectly" in Section 607 and Section 608, coupled with the absence of that phrase from Section 610, lends a new dimension to the "void-for-vagueness" argument being made by the petitioners. One contrasting these three statutes, and noting the presence of the phrase "directly or indirectly" in two of them, and its omission from the third, would necessarily conclude that the breadth of that third statute is narrower than the other two statutes.

III.

UNCONSTITUTIONAL DISCRIMINATION IN THE ENFORCEMENT OF TITLE 18 U.S.C. § 610

This Court, as well as others, has held that the government, including the judicial branch, will not lend its powers to application of law in an unconstitutionally discriminatory fashion.

Application by the government of Title 18 U.S.C. § 610 has been and is arbitrary, capricious and shocking to the conscience, all in violation of due process and equal protection of the laws.

The government has no right to engage in discriminatory enforcement. In fact, it has an obligation of the highest order to refrain from unconstitutional discriminatory enforcement of our laws.

In view of the foregoing, this portion of the argument urges the Court to take judicial notice of the unconstitutional discrimination in the enforcement of Section 610. It is acknowledged that this question was not raised in the courts below. Notwithstanding, it is suggested that the powers of this Court will not be lent to sustaining unconstitutional government action regardless of the point in time at which the unconstitutional action is raised.

Nearly a century ago this Court discarded the view that defendants who claim unconstitutional discrimination need not be heard simply because they are defendants and that prosecutors are constitutionally unfettered in the exercise of their powers. The dictate of this Court could not be more clear than:

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye

> and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. *Yick Wo* v. *Hopkins,* 118 U.S. 356, 373-74 (1886).

No argument is here advanced that *all* crime need be prosecuted in order to prosecute *some* crime. That argument skirts the issue; it is not the thrust of our argument that discretion in prosecution of crime be abolished.

However, we do assert that discretion is not license and that the government is consciously engaged upon a course of heretofore unfettered unconstitutional selective enforcement of Section 610. The case before the Court is but another marker along that course.

Yick Wo, supra, involved the discriminatory enforcement of a San Francisco city ordinance against Chinese laundries and the resultant imprisonment of the Chinese proprietors. To that the Court's answer was:

> [W]hatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Id. at 373.

In *Yick Wo,* the arbitrariness lay in the unequal administration of the law against Chinese.

In another case challenging discriminatory enforcement of the West Virginia recidivist, or colloquially

the "three-time-loser" statute, the petitioner failed to show purposeful discrimination by the prosecution. In pointing out the petitioner's failure the Court said the records on other three-time offenders may not have been available to prosecutors until it was too late to prosecute them as repeaters. "Hence the allegations [of the petitioner] set out no more than a failure to prosecute others because of a lack of knowledge of their prior offenses." *Oyler* v. *Boles,* 368 U.S. 448, 456 (1961). While unsound factually, the Court still thought that further comment was warranted on the legal argument and added that:

> [T]he conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation. Even though the statistics in this case might imply a policy of selective enforcement, it was not stated that the selection was deliberately based upon an unjustifiable standard such as race, religion or other arbitrary classification. Therefore, grounds supporting a finding of denial of equal protection were not alleged. Id. at 456.

So, while negating the specific transgression, the Court recognized, again, the general requirement of prosecutorial due process and the possibility for prosecutorial abuse.

In *Washington* v. *United States,* 130 U.S. App. D.C. 374, 401 F.2d 915 (1968), an allegation of discriminatory enforcement was reviewed. The court found that there was a failure to make out a case of discrimination, but several observations relevant to the instant case were made.

First, the court recognized, as does this brief, the difference between discriminatory enforcement and the

right of the legislature to legislate or, as it were, regulate selectively, so long as the regulation is not disproportionate to the evil or danger sought to be eliminated.

Second, the concepts of equal protection and due process both stem from the American ideal of fairness and while the two are not always identical, unequal application of criminal laws or unequal protection is violative of due process.

Third, while not having to reach the point, the court said that it thought "prosecutors, like other governmental representatives, were constitutionally bound" to avoid intentional discrimination.

The admonition is not surprising for it is well settled that equal protection and due process as mandated by the Constitution apply to all agencies of government. *Shelly* v. *Kraemer,* 334 U.S. 1 (1947). It appears equally well settled that discriminatory enforcement is a good defense. *Two-Guys from Harrison-Allentown, Inc.* v. *McGinley, District Attorney,* 366 U.S. 582, 588 (1960); *People* v. *Utica Daw's Drug Co.,* 16 A.D. 2d 12, 225 N.Y.S. 2d 128 (1962), 4 ALR 3d 404 and Annotation therein.

In *Utica Daw's* the trial court, while recognizing the holding of *Yick Wo,* committed reversible error by submitting to the jury the question of unconstitutional discriminatory enforcement and refusing to hear evidence of illegal activity similar to that of the defendant which went unprosecuted. The defendant had maintained that its criminal prosecution for making illegal sales on Sunday was based on its being a "cut-rate" store and that non "cut-rate" stores, while committing the same violation, went unprosecuted. The

prosecutor in *Utica Daw's* conceded that if enforcement of the statute were discriminatory, then it would constitute a good defense.

The appellate court in *Utica Daw's* perceived the distinction between non-enforcement of the criminal law and unconstitutional discriminatory selective enforcement. However, on appeal it was held that non-enforcement is relevant evidence bearing upon the contention of unconstitutional discrimination in the enforcement. Discriminatory enforcement abrogating constitutional rights, as it obviously always does, will not, the court said, be aided by the courts which are themselves agencies of government. See, *Chicago, B. & O. R.R. Co.* v. *Chicago,* 166 U.S. 226, 233-34 (1897).

The New York court said that the question (which answers itself) was whether public authorities should be allowed "sporadically to select a single defendant or a single class of defendants for prosecution because of personal animosity or some other illegitimate reason." *People* v. *Utica Daw's Drug Co., supra,* 225 N.Y.S. 2d at 133.

Surely, sporadic enforcement for illegitimate reason is a thundering issue in the instant case. If there be any doubt of that, resolution is found in the studied course of the prosecution of labor leaders, and the government's benign attitude toward other known offenders of the same statute. There is no rational basis for the disparate treatment. Unprosecuted charges of violation by others are found in the very indictments under which labor union officers are prosecuted.

To document the foregoing one need look only to the indictments themselves. In the case before the

Court, it is alleged that a number of political contributions were made by issuance of checks: Yet, there has been no indictment of any of the "acceptors" or "recipients". In fact, in other cases the "recipients" or "acceptors" are actually identified by name in the indictment. See, *e.g., United States* v. *Seafarers International Union of North America, Gulf, Lakes and Inland Waters District, AFL-CIO, et al.*, (D.C. E.D.N.Y. 1970); *United States* v. *Warehouse and Distribution Workers' Union, Local 688, et al.*, No. 60 CR 42 (E.D. Mo. E.D. 1960); *United States* v. *The First National Bank of Cincinnati*, Crim. No. 9473 (S.D. Ohio E.D. 1971); *United States* v. *W. A. Boyle, et al.*, Crim. No. 346-71 (D.D.C. 1971).

It is the contention of this defendant that purposeful discrimination in the enforcement of this statute appears on the face of the record. Not one of the persons who accepted or received the alleged contributions or expenditures is indicted, nor has any presentment been made to the grand jury seeking such an indictment. To the best of our knowledge after investigation, not once in the long history of this statute or its predecessors has a single person who accepted or received prohibited political expenditures or contributions been prosecuted. Politicians are, in effect, as immune from prosecution under this statute as Members of Congress are immune for their words while on the congressional floors. In addition, the discrimination is intentional and purposeful. Obviously, by the allegations in the indictments themselves, the government has in its files evidence that would support prosecutions of individuals other than labor union officials.

The extent to which the government responsibility has been abdicated in this area of enforcement is harrendous. The void left by intentionally discriminatory enforcement of Section 610 is now being filled by private litigants. *Common Cause et al* v. *Democratic National Committee et al,* C.A. No. 61-71 (D. D.C. 1971). The suit charges:

> Every president elected in recent times and his national political party have been the beneficiaries of contributions made in violation of the (federal) laws. No attorney general has prosecuted either the persons making such unlawful contributions or the persons or political entities soliciting them.

The court has ordered that fund raisers for the major national parties submit to discovery on their roles in violating federal campaign financing laws. See, Washington Evening Star, Aug. 24, 1971, at A-3.

From the time of the first Section 610 case to come before the Court this pattern of discrimination against labor union officers has prevailed. Not only have politicians been immune from prosecution, but the Court's attention is called to the fact that no reported case reveals a corporation officer or a bank officer being prosecuted for consenting to a contribution or expenditure in violation of this statute, that the government studiously ignores such violations and that of the five types of offenders who could be prosecuted under this statute, labor union officers, with two exceptions to be cited *infra,* are the only individuals who have ever been prosecuted. Even when a corporation is prosecuted, with one known exception, its officers are not. See, *e.g., United States* v. *Lewis Food Supply,* 366 F.2d 710 (9th Cir. 1966). Moreover, in the case now pending against the amici curiae

there is the anomaly that the union, which is alleged to have been making the prohibited expenditures or contributions since 1943, has not been indicated. *United States* v. *W. A. Boyle, et al.,* Criminal No. 346-71 (D.D.C. 1971).

The discrimination is so systematic that it may as well be incorporated in and proclaimed by the statute itself. *Snowden* v. *Hughes,* 321 U.S. 1 (1943).

We believe that the only exceptions to this constitutionally repugnant discrimination are two: *United States* v. *First Western State Bank of Minot, North Dakota, et al.,* Crim. No. 575 (D.C.N.D. 1970); *United States* v. *Bernard J. Clougherty, et al.,* No. 37414 CD, (D.C. Cal. C.D. 1969). In each of those cases, at least one officer of the offending organization was indicted. But the number of Section 610 indictments against *individuals* in the labor union movement contrasted with Section 610 indictments against *individuals* in other classes is so utterly disparate as to be obvious from the few unreported cases cited herein and the list of reported cases. See, *e.g.,* Title 18 U.S.C. § 610 and cases cited therein.

Violations of Section 610 by corporate officers, as well as by politicians, is hardly an unknown occurrence. As recently stated by Senator Gravel on the floor of the United States Senate, "[I] can give . . . chapter and verse how corporations shell out money to executives and they turn around and give it to politicians." 117 CONG. REC. S. 13151 (daily ed. Aug. 4, 1971). Surely, the government will not deny that it knows of these violations and still fails to prosecute. The question is why do labor affiliated individuals suffer such vigorous enforcement of Section 610 while other known violators are ignored.

CONCLUSION

In conclusion it is respectfully submitted that the "contribution" provision of Title 18 U.S.C. § 610 is unconstitutional standing alone; moreover, the "contribution" provision is inseparable from the unconstitutional "expenditure" provision and both provisions must, therefore, fall. In addition, Congress never intended to prohibit, and the statute on its face does not prohibit, indirect contributions or expenditures. Finally, the Court is urged to recognize the unconstitutional discrimination in the enforcement of this statute and refuse to sanction convictions obtained against members of a class singled out for special prosecution.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, ET AL., *Petitioners*,

v.

UNITED STATES, *Respondent*.

BRIEF OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION AS AMICUS CURIAE

BRIEF FOR THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION AS AMICUS CURIAE

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On a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION AS AMICUS CURIAE

This brief *amicus* in support of the position of the United States of America is filed by the National Right to Work Legal Defense Foundation with the consent of the parties as provided for in Rule 42(2) of the Rules of this Court.

INTEREST OF NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION

Under compulsory unionism arrangements similar to the union shop and hiring hall arrangements enforced by petitioners herein millions of American workers are compelled to join labor unions or pay union dues and fees as a condition of employment. The power and control thereby given the union and its officers over the lives and livelihood of rank and file workers inevitably leads to abuse of such power and to serious infringement of the civil liberties and individual rights of the workers involved. A most pernicious by-product of compulsory unionism is the use of compelled union dues to furnish financial support for partisan political activities and causes which the individual worker would either strongly oppose or would not willingly support with his own money if not compelled to do so.

Unfortunately, the individual worker rarely, if ever, has the resources to undertake legal action to challenge the union's actions which improperly intrude upon his personal rights. In too many cases employees are completely unaware of their rights or the legal procedures available to defend them. In almost all instances the union officials against whom complaints are directed have at their disposal the financial resources of the union, as well as the abundant talents of union legal counsel, to overpower any upstart member or group of members daring to challenge their actions or authority.

The National Right to Work Legal Defense Foundation was created for the purpose of providing legal aid to workers who suffer legal injustice or employment discrimination as a result of compulsory unionism,

and to assist such workers in protecting rights guaranteed to them under the Constitution and laws of the United States. Since its beginning the Foundation has received a constant stream of complaints from rank and file workers whose union officers, business agents and other officials and staff representatives are deeply engaged in partisan political activity and are using the union as an instrument for raising money and otherwise assisting in the election of candidates for public office. These workers feel frustrated and outraged at being compelled through their exacted dues to provide support for candidates not of their own choosing. They are, however, for all practical purposes, locked-in to the union and have no freedom of choice in regard to contributing their money to the union's involvement in the campaigns of these candidates. Only by forfeiting their jobs can they escape the compulsion thus laid upon them to provide financial support for the political activities of their union officers and representatives.

The National Right to Work Legal Defense Foundation strongly feels that by thus forcing collective political action on their rank and file members unions are acting beyond the scope of their intended authority under applicable statutes of the United States, and are imposing an unreasonable burden and restraint upon the individual worker's constitutionally protected rights of freedom of speech, freedom of conscience, freedom of association and freedom of political thought and action.

For these reasons the Foundation has a very deep interest in the issues presented in the present case, and feels that whatever disposition the Court makes of this case will profoundly affect the rights of millions of American workers.

ARGUMENT

The rank and file of any union necessarily includes persons of varying political views and party affiliation, different religious faiths and different ideological and philosophical convictions. Some are liberals, some are conservatives; some may favor school bussing, while others are strongly opposed; some are hawks, some are doves. These widely diverse individuals have not, by becoming members of the union, authorized the union or its officers to make their political decisions for them or to decide which candidates or parties deserve their support and financial assistance. Unions have, nevertheless, taken on this function for themselves and have succeeded in forging powerful political machines which support almost exclusively, as did Local 562, the candidates of one of the two major political parties. In this manner the rank and file union member is crammed into a mold of political conformity without regard to his personal predilections, and without his consent.[1]

The political activity of petitioner Pipefitters Local 562, described in the record herein, is part of a general pattern of intensive involvement by organized labor in partisan political campaigns at every level of government, national, state and local. Most, if not all, of the major labor unions in the United States have

[1] It is estimated by the Bureau of Labor Statistics that approximately 80% of all union contracts contain union security clauses compelling continued union membership or payment of union dues and fees as a condition of employment. This means that only 4 million of an estimated total of 20 million union dues payers have unfettered freedom of choice respecting union membership or financial support for the union. See, BLS Bulletin 1686, January 1971; BNA Labor Relations Expediter, Collective Bargaining Contracts, Sec. 17.

established and maintain political action committees financed at least in part by the compelled dues and fees of rank and file workers under compulsory union shop and agency shop arrangements.[2] Petitioners and their *Amici* justify these political activities on the ground that unions have a distinct set of economic interests which can best be protected by electing their *friends* to Congress and other public offices. For this reason, they argue, the prohibitions of Title 18, United States Code, Section 610 should, in respect to unions, be very narrowly applied, if indeed they should be applied at all.

The compulsory nature of Local 562's political fund is evident from the circumstances under which it was created and maintained. Local 562 exercises jurisdiction over all major jobs in a territory comprising more than half of the State of Missouri. Within this same territory are three other Pipefitters Locals, but contractors on major jobs must obtain their pipefitters through the exclusive referral system (hiring hall) maintained by Local 562. Each worker referred to a job is thus subject to the control of Local 562, whether a member of that local, or a member of one of the other three Pipefitters Locals within Local 562's jurisdiction.

The political fund maintained by Local 562 during the period here involved was entirely financed by col-

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[2] In the Amicus Curiae brief filed herein by the AFL-CIO it is stated (p. 2): "As a means of accomplishing their political objectives, many unions have set up labor political committees as an integral subdivision of the union itself. These political arms of organized labor . . . engage in educational activity directed at the union's members [and] . . . channel a flow of contributions and expenditures in connection with federal elections."

lections from members of Local 562, and members of other locals (out-of-towners) referred to jobs within Local 562's territorial jurisdiction. These collections, during respective time periods, varied from 50 cents to $1.00 for each day worked by each Local 562 member, and from $1.50 to $2.00 a day for each day worked by out-of-towners.[3] Signatures of members and out-of-towners were obtained on "voluntary contribution cards," and the assessments were regularly collected by the union steward from the individual workers on the job site and tabulated on weekly collection report sheets. From 1963 through 1966 the collections totalled $1,230,986. During the same period the fund disbursed substantial amounts to candidates for federal offices, all of whom were Democratic Party candidates. Petitioners state in their brief that among the thousands of members who made payments to the fund no contributor was found who was a Republican. (Brief p. 26)

The contention of petitioners that all of these contributions were made voluntarily and without any element of compulsion is beyond the limits of plausibility. It is essentially incredible that such a large body of hourly paid workers were so uniformly and consistently motivated politically that on their own volition over a period of several years, they chose to pay over to Local 562's political fund between $20

[3] In October 1963 the contribution rate for Local 562 members was increased from 50 cents to $1.00 a day, and for out-of-towners from $1.50 to $2.00 a day. The $2.00 a day contribution took the place of the $8.00 per month "travel card" fee required by the union rules for the privilege of working in another local's territory. Thus, in lieu of paying $8.00 a month for a travel card the out-of-towners contributed between $40 and $50 a month to the political fund.

and $50 of their earnings every month to be used exclusively to support the candidates of one of the two major political parties. It is utterly implausible that such a phenomenal response to the union's request to sign "voluntary" pledge cards bore no relationship to the fact that under the existing arrangements established by the union the employing contractors had to obtain their labor through the union, and the union exercised absolute control over job referrals.[4]

The fact that a separation was maintained between the bank account of the union and the bank account of the political fund, or that the fund was given a name which included the word "voluntary," does not alter the compulsory nature of the payments. The money was paid by the union members as an aspect of their representation by the union and the union's control over job referrals. The amount paid was directly tied to the number of days worked by the individual worker; if he worked three days he paid one sum, if he worked five days he paid another; if he were a Local 562 member he paid a fixed sum per day, and if an out-of-towner he paid a different sum, but also fixed in amount. Such a rigid and unvarying payment structure, plus the lack of any

---

[4] By contrast, a bi-partisan in-plant solicitation program adopted by Aerojet General Corporation, which allows the individual employee to designate the party or candidate of his choice, produces an almost even split between the Democratic and Republican parties. In 1964, for example, contributions totalled $136,000, of which $66,100 went to Democratic Party candidates, and $63,800 went to Republican Party candidates. The average contribution was $6.85, with 20,000, or 72.5 percent of the firm's employees contributing. *Alexander, Financing the 1964 Election,* p. 105. In 1968, the average contribution was $8.27, with 61 percent of employees participating. *Alexander, Financing the 1968 Election,* p. 206.

choice in designating the party or candidate to whom the money should go, is totally inconsistent with the concept of voluntariness. The union's use of "voluntary pledge cards" was thus a mere charade—a gimmick designed to put a gloss of respectability and legality upon a compulsory payment system backed up by the coercive power of the union hiring hall.

CONSTITUTIONAL QUESTIONS

Petitioners' brief presents an extensive attack on the constitutionality of Section 610 on grounds, *inter alia*, that it abridges freedom of speech and other First Amendment rights of union members because *"if they are not permitted to pool their resources to participate in political action through the union they are thereby eliminated from participation in federal elections and to that extent from public affairs."* (Brief p. 84) Further, petitioners contend, Section 610 on its face renders meaningless the right of union members to vote and to choose their Senators and Representatives as guaranteed by Article I, Section 2 of the Seventeenth Amendment because *"this constitutionally guaranteed right of a qualified voter to make an effective choice of Congressional representatives . . . includes and requires group political action."* (Brief p. 114) Section 610 as construed and applied by the courts below, and on its face, petitioners conclude, *"requires union members to discard their only effective means of political expression involving their livelihood, the union."* (Brief p. 115)[5]

There is indeed cause for concern as to violation of the political rights of union members, but the argu-

[5] The briefs of Petitioners' *Amici* make similar attacks on the constitutionality of Section 610.

ments advanced by petitioners are the exact polar opposite of the true reasons. If this case presents any genuine questions of unconstitutional suppression of union members' rights such questions arise not by virtue of the strictures of Section 610 but rather because the union compels them to pay money to support and elect candidates not of their own choice. The freedom of association guaranteed under the First Amendment clearly protects the right of workers to form labor unions, *Thomas* v. *Collins,* 323 U.S. 516 (1945), but this is a far cry from saying that once they have formed a union they have a protected right under the First Amendment to force every worker to pay compulsory dues or assessments, and to then channel the compelled money into political campaigns. To attempt to equate the individual citizen's constitutionally protected right to vote with an equivalent right of a union to use compelled union dues for political purposes is utter sophistry; a distortion of reality and logic.

Section 610 in no way restricts the individual union member in making his own contributions to candidates, working for the election of candidates, or voting or urging others to vote for the candidates of his choice. He can join or support any political party he chooses, and he has untrammelled freedom to participate to the fullest extent in federal elections and public affairs. Section 610 places no restriction upon his political association or freedom, but merely prohibits the expenditure of union money, as well as corporate money, in connection with federal elections. There can be no question that this constitutes a valid exercise of Congressional authority to regulate fed-

eral elections. See, *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947).

In the *Mitchell* case the court considered similar constitutional attacks on the prohibitions of the Hatch Act[6] against political activity by federal employees. The appellant there was discharged from his federal job for having engaged in political work at the polls during his free time, and sought reinstatement on the ground that his discharge constituted an unlawful interference with his freedom under the First, Fifth, Ninth and Tenth Amendments to work to support political candidates of his choice. The court rejected this constitutional challenge and held that the discharge action was proper under the provisions of the Hatch Act and Civil Service rules adopted pursuant to that Act. As stated by the court:

> "The provisions of § 9 of the Hatch Act and Civil Service Rule 1 are not dissimilar in purpose from the statutes against political contributions of money. The prohibitions now under discussion are directed at political contributions of energy by Government employees.
>
> "These contributions, too, have a long background of disapproval. Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection.
>
> "The teaching of experience has evidently led Congress to enact the Hatch Act provisions. To declare that the present supposed evils of political activity are beyond the power of Congress to re-

[6] 18 USC Section 595.

dress would leave the nation impotent to deal with what many sincere men believe is a material threat to the democratic system. Congress is not politically naive or regardless of public welfare or that of the employees. It leaves untouched full participation by employees in political decisions at the ballot box and forbids only the partisan activity of federal personnel deemed offensive to efficiency. With that limitation only, employees may make their contributions to public affairs or protect their own interests, as before the passage of the Act." 330 U.S. 75, 99.[7]

In *Ex Parte Curtis,* 106 U.S. 371 (1882), the Court upheld the constitutionality of a statute which prohibited federal employees from requesting, giving to or receiving from any other employee of the government any money, property or other thing of value, for political purposes. As stated by the court:

". . . If contributions from those in public employment may be solicited by others in official authority, it is easy to see that what begins as a request may end as a demand, and that a failure to meet the demand may be treated by those having the power of removal, as a breach of some supposed duty, growing out of the political relations of the parties. Contributions secured under such circumstances will quite as likely be made to avoid the consequences of the personal displeasure of a superior as to promote the political views of the contributor; to avoid a discharge from service, not to exercise a political privilege. The law contemplates no restrictions upon either giving or receiving, except so far as may be necessary to protect, in some degree, those in the public service against exactions through fear of personal loss." 106 U.S. 371, 235.

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[7] See also, *State of Oklahoma* v. *Civil Service Commission,* 330 U.S. 127 (1947).

These same words may be aptly applied to the payments made by members of Local 562 to the "voluntary" political fund. Since the pledge cards were solicited by union officials who controlled all job referrals "it is easy to see that what begins as a request may end as a demand," and contributions made under such circumstances "will quite as likely be made to avoid the consequences of the personal displeasure of [the union officers] as to promote the political views of the contributor."

Far from infringing the union member's constitutional rights, Section 610 was designed and intended by Congress to preserve and protect his freedom of political association and expression. As pointed out in *United States* v. *CIO*, 335 U.S. 106 (1948), a major purpose of Section 610 was "to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views." 335 U.S. 106, 134-135.

> "Its legislative history indicates congressional belief that labor unions should then be put under the same restraints as had been imposed upon corporations. It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." 335 U.S. 106, 115.

Mr. Justice Rutledge, in discussing the extension of the Corrupt Practices Act to labor organizations, concluded:

> "In one important respect the history again is clear, namely, that the sponsors and proponents

had in mind three principal objectives. These were: (1) to reduce what had come to be regarded in the light of recent experience as the undue and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections and of official conduct ensuing from the choices made in them against the use of aggregated wealth by union as well as corporate entities; and (3) *to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views.*" 335 U.S. 106, 134-135 [Emphasis added]

The inclusion of unions within the prohibitions of Section 610 was part of the statutory scheme of the Taft Hartley Act, an Act which also contains provisions authorizing unions to compel workers to become members or pay membership dues and fees as a condition of employment.[8] If, in conjunction with its federally sanctioned authority to compel payment of dues, the union can use the compelled payments for political purposes the worker's First Amendment freedoms of political association and expression are clearly sacrificed. Justice Douglas made this point most clearly in his concurring opinion in *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961), as follows:

"The collection of dues for paying the costs of collective bargaining of which each member is a beneficiary is one thing. If, however, dues are used, or assessments are made, to promote or oppose birth control, to repeal or increase the taxes on cosmetics, to promote or oppose the admission of Red China into the United Nations,

[8] 29 USC Section 158 (a) (3).

and the like, then the group compels an individual to support with his money causes beyond what gave rise to the need for group action.

"I think the same must be said when union dues or assessments are used to elect a Governor, a Congressman, a Senator or a President. It may be said that the election of a Franklin D. Roosevelt rather than a Calvin Coolidge might be the best possible way to serve the cause of collective bargaining. But even such a selective use of union funds for political purposes subordinates the individual's First Amendment rights to the views of the majority. I do not see how that can be done, even though the objector retains his rights to campaign, to speak, to vote as he chooses. For when union funds are used for that purpose, the individual is required to finance political projects against which he may be in rebellion." 367 U.S. 777, 778.

In *Seay* v. *McDonnell Douglas Corporation*, 427 F2 996 CA9 (1970) a group of employees complained against the use by a union of a portion of their compelled union dues for political purposes. In its answer to the complaint the union admitted it made certain expenditures from dues money for political activities, but insisted that the amount expended was so small in relation to the total amount of dues collected as to be *de minimis*. In disposing of this contention the Court of Appeals said:

". . . . we are not impressed by appellee's 'de minimis' contentions. The diversion of the employees' money from use for the purposes for which it was exacted damages them doubly. Its utilization to support candidates and causes the plaintiffs oppose renders them captive to the ideas, associations and causes espoused by others. At the same time it depletes their own funds and

resources to the extent of the expropriation and renders them unable by these amounts to express their own convictions, their own ideas and support their own causes." 427 F2 996, 1004.

Freedom of association, it has been held, is a composite right derived from freedom of speech, freedom of assembly and the freedom to petition enumerated in the First Amendment.[9] To the extent that compulsory unionism requires a worker to make a choice between joining the union or losing his job he is thus limited in his freedom of association. The right not to join a union is a necessary corollary of the right to join, for without a right not to join there can be no such thing as a right to join. Freedom rests on choice and where choice is denied freedom does not exist. In its decision in *Board of Education* v. *Barnette*, 319 U.S. 624 (1943) the Court recognized that there are affirmative and negative sides to constitutional liberties in upholding the right of members of a religious sect to refuse to join in the oath of allegiance to the flag. The Court specifically pointed out that freedom of speech carries with it a freedom to remain silent, and that it makes no difference that the majority of the people favor the particular restriction or limitation. "The very purpose of the Bill of Rights," the Court said, "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities

[9] "It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, and therefore are united in the First Article's assurance." *Thomas* v. *Collins*, 323 U.S. 516 (1945) at p. 530.

and officials and establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." This would seem to dispose of the argument made by petitioners and their *Amici* that when a majority of the workers in a bargaining unit vote to contribute union money to political candidates the minority must accept the results of the "democratic" process.

The extraordinary privilege of exclusive representation which Congress has given unions under the National Labor Relations Act was never intended as a license for the union to force workers to make contributions to political causes. As stated by the court in *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961):

> ". . . Congress contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective bargaining agreements and the costs of the settlement and adjustment of disputes. *One looks in vain for any suggestion that Congress also meant to provide the unions with a means of forcing employees, over their objection, to support political causes which they oppose.*" 367 U.S. 740, 763. [Emphasis added]

The clear answer to the attacks made upon the Constitutionality of Section 610 by petitioners and their *Amici* is that without Section 610's prohibitions on political expenditures the exclusive bargaining and union shop provisions of the NLRA could not constitutionally stand. Agreements requiring compulsory

payment of union dues, this Court has held, bear the *imprimatur* of the federal government, and their enforcement involves a sufficient element of governmental action to present constitutional issues.

> "But it is plain that when Congress clothes the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents the public interest in the exercise of that power is very great. . . . The loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the Union. But power is never without responsibility. And when authority derives in part from the Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself."
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> *American Communications Association* v. *Douds*, 339 U.S. 382, 401-402 (1950)

> "The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes private agreement to invoke the federal sanction. . . . In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed."
>
> *Railway Employees Department* v. *Hanson*, 351 U.S. 228, 232 (1956)

> "If, as the State court has held, the Act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty toward its members, constitutional questions arise. For the representative is clothed with power not unlike that of a legislature which is subject to constitutional lim-

itations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect these rights.

Steele v. *Louisville and Nashville RR.*, 323 U.S. 192, 198 (1944)

Since Local 562 has been "clothed with legislative powers" to enforce compulsory unionism on those it represents, when that union, or any other union, in the exercise of such powers, invades or restricts the rights of the bargaining unit members there is present the requisite "state action" to invoke protection of the Constitution. The consequences were well expressed by Justice Black in his dissenting opinion in the *Street* case (*supra*):

"There can be no doubt that the federally sanctioned union-shop contract here, as it actually works, takes a part of the earnings of some men and turns it over to others, who spend a substantial part of the funds so received in efforts to thwart the political, economic and ideological hopes of those whose money has been forced from them under authority of law. This injects federal compulsion into the political and ideological processes, a result which I have supposed everyone would agree the First Amendment was particularly intended to prevent. And it makes no difference if, as is urged, political and legislative activities are helpful adjuncts of collective bargaining. Doubtless employers could make the same arguments in favor of compulsory contributions to an association of employers for use in political and economic programs calculated to help collective bargaining on their side. But the argument is equally unappealing whoever makes it. The stark fact is that this Act of Congress is being used as a means to exact money from these em-

ployees to help get votes to win elections for parties and candidates and to support doctrine they are against. If this is constitutional the First Amendment is not the charter of political and religious liberty its sponsors believed it to be." 367 U.S. 740, 790.

DISCRIMINATORY APPLICATION OF SECTION 610

The petitioners argue that Section 610 does not fall with equal force on corporations and businessmen on the one hand, and union members on the other. They argue that the law allows broad freedom for businessmen to make political contributions in large amounts, and if unions are not permitted to offset such contributions they and their members suffer invidious discrimination and are thereby deprived of rights guaranteed by the Fifth Amendment. Through certain named management and business associations "which are the arch rivals of organized labor" corporations are able, petitioners assert, to evade the prohibitions of Section 610.[10]

Petitioners cite no supporting authority for this latter assertion, and pass over the subject with the comment that "It is beyond the purpose of this brief to detail the enormous sums of money business and management associations pour into federal campaigns . . . yet it would be naive to presume that business and management associations' federal campaign contributions are likely to be non-substantial."[11]

Despite these perfervid charges by petitioners there never has been any doubt that membership dues or

[10] Brief pp. 103, 104.

[11] Brief p. 107.

other fees paid by a corporation to a trade association or similar business association may not be used in any part for the purpose of political contributions or expenditures by the association. Not only would the corporate contributor and the association both be in violation of the prohibitions of Section 610, and thereby subject to criminal prosecution under that Section, but the business association would immediately and irreparably lose its status as a non-profit organization under virtually all state laws governing non-profit associations, and would also lose its tax exempt status under the Internal Revenue Code, a status which is essential to its very existence.[12] Moreover, the laws of at least 35 states forbid corporations from making political contributions in *any* elections, and in a number of other states it has been held that a political contribution by a corporation may be deemed *ultra vires* and beyond the authorized powers of the corporation. See, Library of Congress, Legislative Reference Study, February 5, 1965; Thompson on Corporations, Vol. 4, Section 2879.

Having failed to cite any authoritative source material, or any data whatsoever, to substantiate their assertions that Section 610 permits corporation funds to be channeled through trade associations into political campaigns, petitioners glibly switch over to a general assertion that political contributions by wealthy persons "and other interest groups hostile to labor" so greatly outweigh the political participation of labor that "the working class is left with no voice."[13] For

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[12] See, Internal Revenue Service, Handbook of Exempt Organizations, Section (10); Webster, The Law of Associations, 1971, Chapter VII.

[13] Brief p. 109.

this purpose they cite data extracted from studies prepared by Herbert E. Alexander entitled, Financing the 1960 Elections, Financing the 1964 Elections, and Financing the 1968 Elections, published by the Citizens Research Foundation. Petitioners contend that these studies show that a large proportion of political funds are derived from the contributions of relatively few well-to-do contributors, and suggest that this money goes into the campaigns of candidates unfriendly to organized labor.

This same theme is heavily emphasized by petitioners' *Amici,* and the brief of the AFL-CIO cites portions of Alexander's 1968 study as showing that 263 individuals with business occupations made contributions in amounts of $10,000 or more to federal election campaigns, for a total of $6.7 million, as contrasted with the $7.1 million of expenditures reported for national level labor political committees. The AFL-CIO brief concludes: *"Thus 263 businessmen balanced the efforts of some 16 million workingmen and women.*[14]

The manner in which this data is presented is deceptive and false, and the conclusions sought to be drawn from it are equally false. Petitioners would have the court believe that contributions by businessmen and wealthy persons with business connections all went to one party, thereby far outweighing labor's contributions to the other party. Dr. Alexander's tables show this to be untrue. For example, his list of contributors of $10,000 or more in 1964 shows that the great majority of these contributions were made to

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[14] Brief of AFL-CIO as Amicus Curiae, p. 22, footnote. Emphasis added.

the presidential candidate supported by organized labor. Approximately 60% of the total amount contributed by these contributors went to the labor supported candidate, and 40% to the opposition candidate.[15] The 1968 data, referred to in the AFL-CIO's brief is similarly deceptive and false. The 263 businessmen contributing $10,000 or more in 1968 did not by any means universally support the presidential candidate opposed by labor. In fact, $2.5 million of the total contributed by these 263 businessmen went to the party of the candidate supported by organized labor. Thus, instead of *balancing* the $7.1 million contributed by organized labor, as AFL-CIO states, these business contributions supplemented and strengthened labor's political effort.[16]

In any event, these contributions of individual businessmen, whether to one party or the other, are nowhere shown to be from corporate funds, or otherwise in violation of the prohibitions of Section 610. It must be assumed in the absence of any contrary evidence that they were made by the individual contributor out of his own pocket and with after-tax dollars.

The contention of petitioners that Section 610 operates to permit the channeling of corporation money

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[15] Alexander, Financing the 1964 Election, App. A, pp. 128-131.

[16] "Contrary to frequent assertions, American campaign monies are *not* supplied solely by a small handful of fat cats. Millions of people now give to politics. Even those who give several hundred dollars each number in the tens of thousands. And the traditional fat cats are *not* all of one species, allied against common adversaries. Big givers show up importantly in both parties and on behalf of many opposing candidates." Alexander Heard, The Costs of Democracy, University of North Carolina Press, 1960. Emphasis in original.

into politics while at the same time frustrating the political aspirations of the workingman is wholly without foundation in the record before the court. The statute on its face applies equally to contributions or expenditures by corporations and labor unions, and to the extent it provides any loopholes they would all seem to run in favor of permitting a far broader range of political activity to labor unions than could conceivably be allowed for corporations. Thus, for example, unions make expenditures in substantial amounts in connection with voter registration and get-out-the vote drives designed to elect their chosen candidates for federal office. These activities are not directed only toward the ranks of union members, but embrace large segments of the non-union public as well. Unions print and distribute *educational* literature designed to persuade voters to vote for union-supported candidates, and disseminate this material widely among non-union groups. The massive scale of this type of union political activity is described by Alexander Barkan, Director of the Committee on Political Education of the AFL-CIO, in an article appearing in Issues in Industrial Society, Vol. 1, No. 2, published by the New York School of Industrial Relations at Cornell University.

> "Evidence of the intensity of labor's political activity in 1968 was the 55 million pieces of printed matter distributed by national COPE to union members and an additional 60 million plus distributed by state AFL-CIO bodies and international unions. It is unlikely that any organization—including the two major parties—ever produced so much political literature in any one campaign.
>
> "Labor's nationwide registration drive put 4.6 million voters on the registration rolls. Most were

Humphrey supporters. The figure not only represents trade union members and members of their families but reflects the results of labor's registration drives in the Negro, Puerto Rican, and Mexican-American communities. *In many states, labor did the registration job for Humphrey singlehandedly; the Democratic party had abandoned the field.*

"Negro trade unionists were mobilized at a series of conferences in the spring of 1968 which led to the formation of units in 31 big cities to increase the vote in the black community. Three and a half million pieces of literature, especially prepared for the Negro community, were distributed. We were the major national organization working at registering black voters and getting out their vote. The Negro vote for Humphrey exceeded 80 percent.

"The labor movement mobilized Mexican-American farm workers; and the AFL-CIO funded an operation which included a million leaflets, radio spots, and hundreds of election day workers in California alone. Farm workers' ballot boxes in the state also exceeded 80 percent for Humphrey.

"In many states, a house-to-house canvass was conducted as part of our get-out-the vote effort, particularly in selected labor areas and in minority-group areas where there are relatively few telephones. The number of persons involved in this operation was 72,225."

The immeasurable advantage that candidates obtain from such union political activity—probably more valuable than cash contributions in many respects—is the union manpower devoted to these activities. The payment of salaries, the furnishing of office space, office equipment, telephones, travel expense, and other facilities and services necessary to this large scale

union political activity all require *expenditures* within the apparent intent of Section 610, but which are made by unions with an impunity which is not enjoyed by corporations. It is thus evident that if there is any discrimination inherent in Section 610 it is discrimination in favor of unions, rather than the other way around as petitioners contend.

The other constitutional arguments presented by petitioners are equally without foundation.

CONCLUSION

The payments collected from members of Local 562 for the political fund were exacted payments. To say that the members consented to the payments in no wise changes the nature of the transaction. The money was *raised* by the union, and was therefore union money, and the court below properly held that its expenditure in the form of political contributions violated the prohibitions of Section 610.

Section 610 represents a valid exercise of congressional authority to regulate federal elections, and imposes no unreasonable restraint upon the constitutional rights of unions or their members. Quite to the contrary, Section 610 is designed to preserve and protect the constitutional rights of the rank and file union member. The ruling of the court below should therefore be affirmed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the original panel of the court of appeals (Pet. App. A) are reported at 434 F. 2d 1116. The opinions of the court of appeals *en banc* (Pet. App. B) are reported at 434 F. 2d 1127.

JURISDICTION

The original decision of the court of appeals was entered on June 8, 1970. The judgment *en banc* was entered on November 24, 1970. A petition for rehearing of the *en banc* decision was denied on December 17, 1970. Mr. Justice White extended the time for filing a petition for a writ of certiorari to February 1, 1971, and the petition was filed on January 29, 1971,

and was granted on May 24, 1971. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the indictment alleged an offense under 18 U.S.C. 610.

2. Whether the evidence supported petitioners' convictions of conspiring to violate 18 U.S.C. 610.

3. Whether the trial court's instruction to the jury that "the mere fact that the payments into the fund may have been made voluntarily * * * does not, in and of itself, mean that the money so paid into the fund was not union money" was erroneous.

4. Whether 18 U.S.C. 610, on its face or as construed and applied by the courts below, abridges petitioners' rights under the First, Fifth or Sixth, Amendments to the Constitution or under Article I, Section 2 and the Seventeenth Amendment.

5. Whether a special jury verdict that "a willful violation of [18 U.S.C. 610] was not contemplated" entitled petitioners to an acquittal.

STATUTE INVOLVED

In pertinent part, 18 U.S.C. 610 provides:

> It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate,

political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

For the purpose of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

STATEMENT

The petitioner-union and the individual petitioners [1] were convicted on September 19, 1968, by a jury in the United States District Court for the Eastern District of Missouri, of conspiring to violate 18 U.S.C. 610, which proscribes, *inter alia*, any contribution by

[1] One of the convicted individual petitioners, Lawrence L. Callanan, died while the petition for a writ of certiorari was pending.

a labor organization "in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative * * * are to be voted for * * *." Local 562 was fined $5,000, and union officers John L. Lawler and George Seaton were each sentenced to one year's imprisonment and fined $1,000. A panel of the Court of Appeals for the Eighth Circuit affirmed, one judge dissenting. The case was reheard *en banc*, and the court again affirmed petitioners' convictions.

In order to place the issues raised by petitioners—including the sufficiency of the evidence—in their proper setting, we make a rather comprehensive statement of facts, first outlining the scheme alleged in the indictment and then summarizing the relevant evidence which established the existence of this conspiracy.

A. THE INDICTMENT

The indictment charged that from about 1963 until the return of the indictment on May 9, 1968, the defendants' conspired to violate 18 U.S.C. 610, by having Local 562 make political contributions and expenditures in connection with certain federal elections (Par. 9; A. 14).

The indictment charged that they conspired to establish and maintain a special fund, entitled "Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund" (the "Fund"), which would be given the appearance of an entity separate from Local 562 to conceal what in fact were prohibited political contributions by the Local (Par. 10; A. 14); that the defendants, by creating this Fund, intended

to continue the union's practice of collecting for political purposes a fixed sum per day worked from its members and a fixed sum per day worked from non-members working on jobs within its jurisdiction (Par. 13; A. 15); that the defendants collected for the Fund $2.00 per day from non-members working within the jurisdiction of the Local in lieu of collecting for the Local treasury travel card dues at the prescribed rate of $8.00 per month (Par. 14; A. 15); that the defendants caused supervisory members of Local 562 to become agents of the Fund at job sites and at the local headquarters in St. Louis (Par. 15; A. 15–16); that the defendants caused these supervisors to distribute contribution agreement cards at all job sites of pipefitters and to inform newly employed pipefitters of the prescribed rates of participation; and that defendants distributed to the supervisors printed collection sheets for recording the number of hours worked by pipefitters and the amount of their contributions to the Fund (Par. 16; A. 16).

By these means, the indictment charged, the defendants conspired to make substantial contributions in connection with the 1964 and 1966 general election campaigns, with defendants Lawrence L. Callanan and John L. Lawler issuing checks drawn upon the Fund of approximately $150,000 (Par. 17; A. 16).

B. THE EVIDENCE

1. BACKGROUND: THE ECONOMIC POWER OF LOCAL 562

Local 562 has maintained a political fund since 1949 (A. 984). During the period of the indictment the

Fund collected about $1,230,986 (E. 1).[2] In 1964, the Fund disbursed about $97,347 and in 1966 about $45,146 in connection with the election of Federal candidates alone (E. 2). During this period the Local achieved a pre-eminent position among pipefitters, locals in Missouri. It exercises jurisdiction over all major jobs in more than half of Missouri, awarded to it by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, A.F.L.-C.I.O. (A. 976). Contractors requiring pipefitters on major jobs within this area must seek them from Local 562 (A. 979-980) despite the fact that within this same territory there are three other Pipefitters Locals affiliated with the same United Association (A. 978). According to its president, Edward Steska, Local 562 gives priority first to its own members and then, depending upon where the job is located, to members of other Pipefitter's Locals in Missouri (A. 979-980). The members of these other Missouri locals regularly work on jobs under the jurisdiction of Local 562; in such jobs they receive a higher wage rate than on jobs performed under the jurisdiction of their own local unions (A. 750, 757).

Despite its jurisdiction over half of the state, Local 562 early adopted a policy of limiting its membership "to just that number of people that they believed they could constantly find work for, whether employment was good or whether it was slack" (A. 1059). The

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[2] "E" refers to the third volume of the appendix filed by Appellants in the Eighth Circuit Court of Appeals, and lodged with the Clerk of this Court.

union's reluctance to admit new members made it indispensable for it to supply contractors with men from other locals. The local's minutes show the concern that work on the construction jobs not be left entirely to non-members, or "out-of-towners." (E. 389, 392).

Despite the provisions of the Constitution of United Association, Local 562 did not charge the out-of-towners the required travel card dues of $8.00 per month, or any fee whatsoever, for the privilege of working in its jurisdiction. Instead, as explained below, it required these non-members to contribute to its political Fund at the rate of $2.00 per day worked, which kept the total assessment rate for out-of-towners equivalent to what these men would have paid as members of Local 562. (See *infra*, pp. 11–14.)

2. THE EVIDENCE SHOWING THAT THE FUND WAS A DEVICE TO USE UNION FUNDS FOR POLITICAL PURPOSES

The government introduced evidence proving that contributions to the political fund were in fact (1) assessed by Local 562; (2) part of the dues structure of Local 562; (3) collected from non-members in lieu of union dues; (4) expended at times for union purposes; (5) diverted to the Callanan Gift Fund. In short, the government established that the Fund was merely an instrument of the union to use its funds for prohibited political purposes.

a. Contributions as assessments

In form and in general practice, contributions to the Fund were handled like union assessments. During the period of the indictment between January 1963 and 1968, contributions to the Fund were re-

corded on collection sheets, headed "Pipefitter's Voluntary Fund" with columns for names of contributors, daily hours worked, total hours worked and amounts paid. (See, *e.g.*, Govt. Exhs. 74–84; E. 4–14.) A second form employed in connection with the collection of contributions was a printed card entitled "Voluntary Contribution Agreement" (*e.g.*, E. 3, 537). The card contained a blank space to indicate what "% per 8 hour day" the subscriber was to contribute, and had a space for the contributor's signature, the date and the "Witness" (E. 3, 537).

Edward W. Gissing, a fifteen-year member of Local 562 who was a foreman, testified that he handed out voluntary contribution agreement cards to the men on his job along with their withholding forms (A. 152–153, 169; Govt. Exhs. 74–84). Asked whether anyone was fired for failure to contribute, he said, "I don't know of anybody that never did pay it" (A. 170; Govt. Exhs. 77, 79; E. 7, 9). The purpose of keeping records on the contributions, according to Gissing, was so "the office would know who contributed, and how much" (A. 163). He could not name any person working on his crew who did not make his full contributions (A. 164–165). That other foremen similarly treated the "contributions" as a kind of dues to the union is borne out by their testimony. (See, *e.g.*, A. 178–194.)

Unlike other employers, who began withholding dues and assessments from paychecks of union members after October 1963, Anheuser-Busch did not check off dues and assessments for the union. Thus, the union itself collected dues and assessments from its

men working there. The testimony of Jack Collom, a member of the Local for twenty years and union steward at Anheuser-Busch for three years (A. 214), indicates that there were similar collection sheets for regular assessments and fund contributions, that all pipefitters working there paid both assessments and contributions, usually in a lump sum, and that records were kept of those who fell behind in their contributions as well as in their assessments. (See Govt. Exhs. 90–101; E. 15–179; A. 219, 227–228.)

A number of witnesses acknowledged using the term "back assessment" to note on their collection sheets contributions not made promptly to the Fund (A. 289–290, 293, 318, 425).

When one foreman was instructed by someone at the union hall not to collect from one man (A. 456), he noted "no assessments" after the man's name (A. 457; Govt. Exhs. 88C, 89D, 89G, 89I). One witness who began to refer to a contribution as an "assessment," explained that this was a "slip of the tongue" and that he had been told by others waiting to testify for the petitioners not to call contributions assessments (A. 532–533).

There were, as petitioners stress in their brief (Pet. Br. 37), a number of individuals who testified that they contributed regularly to the Fund and made their contributions to the fund "voluntarily."

Finally, on the subject of collections as assessments it is noteworthy that the Local's minutes of November 21, 1962, in which is reported the recommendation of the Executive Board that a 4% assessment be levied, state, "Under our present wage scale this should give

the secretary treasurer 92½ cents a day per man and your voluntary political, educational, and legislative fund 55½ cents a day per man" (E. 301).

b. Contributions as part of the financial structure of Local 562

As previously noted, Local 562 has had a political fund since 1949 (A. 972). In 1949, the regular assessment imposed on union and non-union members was $.25 per day; each contributed the same amount to the Fund. In November 1962 the assessment, on which the union relies to operate, became $.50 per day, and was paid by both members and non-members who were working on jobs within Local 562's jurisdiction (A. 985; Def. Exhs. GG, HH; Govt. Exhs. 63–68). Union dues, paid by members only, were $3.50 per month, have always been nominal in amount and were largely passed along to the United Association.

After January 1963, the Local ceased to collect the $.50 assessment from non-members but the rate of contribution to the Fund for non-members was increased, so that despite the removal of the assessment, they continued to pay the same total amount as did a member, taking into account the latter's regular assessment plus his contribution to the Fund. Thus between January 1 and October 14, 1963, non-members contributed to the Fund at the rate of $1.50 per day worked; whereas members contributed $1.00 per day (A. 487–500; E. 532–534). When added to the members' assessment of $.50 per day worked, members paid the same total of $1.50 per day as non-members. After October 1, 1963, when a new contract became

effective, the assessment of members increased to $1.00 per day worked. (E. 532, 534; A. 494–496). The rate of contribution to the Fund for non-members was raised to $2.00 per day to match the total assessment and contribution of members (E. 533). Effective in 1966, the assessment rate for members was increased from 2½% to 3¾% of gross wages (A. 496; E. 534), from approximately $1.00 per day worked to $1.50. On the same date, the contribution rate of members to the political fund was reduced from $1.00 to $.50 per day worked (E. 532).

The union minutes of the Executive Board meeting of November 3, 1965, show that the $.50 increase in the union assessment of members was explicitly tied to the $.50 decrease in the contribution rate for members. After referring to the financial condition of the union treasury, the Board recommended an increase in assessment from 2½% of gross wages to 3¾% of gross wages, but added: "We believe when the details are explained to all of you, all will agree as we do on this matter. Because this will be not one extra penny *cost to members* of Local Union 562" (E. 475, emphasis added).

c. Contributions from non-members paid in lieu of assessments and dues

The Constitution of the United Association provides that a pipefitter who works in the territory of another local union must pay that local a travel card fee, which is set at $8.00 per month. Traveling members are not allowed to be charged any other fee ex-

cept the travel card fee (Def. Exh. HH; A. 1010–1014).[3] Despite these provisions, the "out-of-towners" were paying $2.00 per day into the political fund (see *supra* p. 11); this was equvalent to the total assessment and contribution of members and, over a month, five times the amount of the travel card fee.

Several out-of-towners explained that they contributed to the Fund because they were paid more on Local 562 jobs (A. 736, 750). One non-member calculated that he got from $30.00 to $40.00 more per week on Local 562 jobs than on jobs under the jurisdiction of his own local (A. 757). He testified that "except for that, [he] wouldn't be voluntarily paying anything * * *" (A. 759).

William Copeland, an out-of towner, testified that when the contribution rate increased from $1.50 to $2.00 per day, he refused to pay (A. 201). On the following Friday he was laid off the job (A. 202).

Another non-member explained why he signed the agreement card and paid $2.00 a day. "It was just, it was my understanding if I wanted to work and wanted to get a job, that I had to sign, so I just went ahead and signed it" (A. 270).

Passing reference made in the union's minutes to a special event characterizes the contributions that out-of-towners make to the Fund as being in fact payments to the union: "He [President Steska] explained that a barbecue was given for the U. A. members with out-of-town cards who pay into our local union and

[3] "* * * except for such fines as may be lawfully levied under this section, he shall not be required to make any additional payments of any kind for any reason whatsoever" (A. 1012).

their wives, who are working in our jurisdiction on jobs in the northern part of the state * * *" (E. 465–466).

The payment of contributions depended upon and resulted from working under the jurisdiction by Local 562, the same jurisdiction which entitled Local 562 to the travel card fee which they did not collect. A former member of Local 798 of Tulsa, Oklahoma, testified that he and others were employed by an Oklahoma contractor and were working along a pipeline starting at Warrensburg and going to Columbia, Missouri. Believing that Columbia was in Local 562's jurisdiction, these out-of-towners anticipated having to pay to the political fund (A. 404). The men expressed their concern to the steward for the Kansas City Local, and he telephoned Local 562 in St. Louis. He reported that they could forget about contributing because the job was in Kansas City's rather than 562's jurisdiction (A. 405–406).

When one supervisory foreman, Vincent Polito, overheard some workers from San Francisco complaining that they had obligations to their own local and were not interested in the voluntary fund (A. 476), he telephoned petitioner Callanan, who instructed Polito not to take any money from these men (A. 478). Asked why he felt it was necessary to call Callanan about this matter, Polito explained, "I just didn't want him to think that I wasn't collecting my Voluntary, or getting the Voluntary money and not being able to show where it went to" (A. 480).

In another circumstance non-members did not have to pay the $2.00 per day because there had been a

jurisdictional dispute between Local 562 and another local, and an agreement had been reached that money for the Fund would not be paid for that job (A. 929–934, 1046–1047).

d. Expenditures from the fund for non-political union purposes

The Fund had no constitution or by-laws, no minutes of meetings, no membership roll and no recording secretary (A. 1018–1019). No audit of its books was conducted (A. 103), and the Fund made no accounting for its expenditures (A. 1077). The ledger maintained for the Fund in 1963 and 1964 (Govt. Exhs. 1–2) was divided into separate categories, including expenditures for political, charitable, defense, educational and legislative purposes (A. 97). After 1964, however, the breakdown was discontinued; the ledger became simply an itemization of checks, payees and amounts (A. 98).

The Local's accountant characterized one $10,000 disbursement from the Fund under the heading "aid to members" as representing "payments to people who apparently were financially in need at a time there was a strike existing" (A. 802, see A. 553–554, 559). Another $191,000 of Fund money was used to build a recreation center in Clarksville, Missouri, owned in part by the Union (A. 787–788, 806, 1075; Def. Exh. AA). The center was to be used as a retirement home for steamfitters (A. 683) and the union membership was told that it had been paid for out of union funds (A. 683, 729–730).

The close interrelationship between the Fund and Local 562 is manifested in a reference contained in

the union's minutes. Petitioner Callanan did not hold any office in Local 562 between October 1, 1961 and September 30, 1967 (Tr. 327–330; Govt. Exh. 63–67). Callanan became Director of the Fund sometime in 1965 (A. 105). The minutes of the executive board meeting of March 9, 1966, reflect the nomination of persons to serve on the committee to represent Local 562 in the conduct of contract negotiations:

> It is the recommendation of your executive board that Business Manager John L. Lawler, the director of our political, education, legislative, charity and defense fund, Lawrence L. Callanan, President Edward Steska, Vice-President George Seaton and Executive Board Member Virgil Walsh comprise the negotiating committee representing Pipefitters Local Union No. 562; and that this committee be given full power and authority to negotiate and reach a new agreement with the Mechanical Contractors Association of St. Louis, Mo. on wages, hours and working conditions (E. 493–494).

e. The Callanan Gift Fund

Between June and September of 1966, contributions to the political Fund were completely suspended in favor of contributions, at the same rate, to the "Callanan Gift Fund" (A. 117–128, 221, 771; E. 180–285). The purpose of this fund was to give money to petitioner Callanan "to do with [as] he [saw] fit" (A. 671). As with the Voluntary Fund, the workers all signed "Gift Fund" agreements (A. 117–118). The Gift Fund also employed a printed collection sheet almost iden-

tical to the political Fund's collection sheets. (Compare Govt Exh 98 with 101; E. 165–179 with E. 180–285.)[4]

Defendant Callanan's son-in-law, Eddie Beck, an employee of the union, was in charge of Gift Fund collections, which he received in the political fund office (A. 117–128).

Workers, both members and non-members, contributed regularly to the Callanan Fund, apparently without protest or inquiry into the purpose of the fund.

C. THE INSTRUCTIONS TO THE JURY

The trial court instructed the jury that Section 610 was violated if the political fund was a subterfuge through which the union itself made proscribed political contributions. The court instructed that the voluntary nature of the payments by members was one of the elements to be considered—but was not dispositive—in determining whether the monies of the fund were in reality union monies. The court's instructions to the jury in determining whether the Fund was a union fund were as follows (A. 1112–1116):

> You will note that Section 610 prohibits contributions by labor organizations for use in connection with an election for a federal office. It does not prohibit any person from making or agreeing to make such contributions or setting

[4] A member of another Local was asked to explain why he was willing to pay $2.00 per day worked to the Callanan Gift Fund when members of Local 562 were giving only $.50. He answered, "Well, I don't know. I don't actually know what kind of dues they have, plus the Voluntary Fund, see. So I'm really not up to date on that, see" (A. 771).

up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization. That is, the statute is not violated unless the contribution is in fact and in the final analysis made by the labor organization.

In this case evidence was offered by the Government to the effect that funds were contributed to or on behalf of candidates for federal office and that such funds were paid out upon checks drawn upon the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund. It is necessary, therefore, that the evidence establish that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union. As to this issue, the defendants contend that the fund in question was a bona fide entity separate and apart from the union, established by the voluntary good faith act of members of the pipefitters Local 562 and others, from which contributions to candidates were made on behalf of the persons who created the fund and not on behalf of the union. On the other hand, the Government contends that the fund was a mere artifice or device set up by the defendants and others as a part of the alleged conspiracy to give the outward appearance of being an independent and separate entity but in fact constituting a part of union funds.

In determining whether the Pipefitters Voluntary Fund was a bona fide fund, separate

and distinct from the union or a mere artifice or device, you should take into consideration [2,071] all the facts and circumstances in evidence, and in such consideration you may consider

1. Whether or not payments to the fund were routinely made at regular intervals at job sites,

2. Whether or not payments to the fund were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union,

3. Whether or not the payment to the fund was determined by a formula based upon the amount of hours or overtime hours worked upon a job under the supervision of the union,

4. Whether or not payments to the fund were at one rate for 562 members and at a different rate for members of other unions,

5. Whether or not payments to the fund began, continued and terminated with employment on a job under the jurisdiction of the union,

6. Whether or not monies of the fund were used to provide benefits to union members in their capacity as members,

7. Whether or not payments to the fund by members of other unions were in lieu of payments to the union in the form of travel card dues in the amount of eight dollars per month,

8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union pursuant to Section 2.05 of its Constitution and by-laws,

9. Whether or not payments to the fund were made by those affiliated with the union to the general exclusion of other classes of persons or organizations,

10. Whether or not contributions to the fund were required as a condition of employment or continued employment of membership in Local 562,

11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

14. Whether or not some persons who worked under the jurisdiction of Local 562 did not contribute to said fund,

15. Whether or not the monies of said fund were used in part to promote activities which were prohibited to Local 562 by its Constitution and By-Laws,

16. Whether or not said fund was established and maintained pursuant to the advice of counsel,

17. Whether or not the monies of said fund were reported to the Department of Labor on the LM–2 forms, which required the reporting of monies of Local 562,

18. Whether or not expenditures from the fund were under the control of the union and its officers,

19. Whether or not records used in the collection of the payments to the fund are similar to those employed from time to time by the union in the collection of its regular dues and assessments.

If upon consideration of all the facts and circumstances in evidence you find that the contributions to the candidates for federal office

for political purposes were in fact made out of union funds by the union, and that the individual defendants as officers of the union, willfully consented thereto, then you may take this fact into consideration together with other facts in evidence in determining whether there was a prior understanding or agreement so to do.

* * * * *

A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money.

D. THE VERDICT

After admonishing that it could convict petitioners of the offense charged only if they "knowingly, willfully and purposely did an act which the law forbids" (A. 1110), the trial judge told the jury that he had prepared two verdict forms for their use and that they were to return their verdict on one of the two forms (A. 1119). The first form was to be used "to return a verdict of either guilty or not guilty of the offense charged;" the second form should be used

"only in the event you find one or more of the defendants guilty of the willful conspiracy charged and further find that the conspiracy * * * did not contemplate a willful violation of Section 610" (*ibid.*). The jury returned its verdict on the second form, finding that petitioners each were guilty as charged but that "a willful violation of Section 610 of Title 18, United States Code, was not contemplated" (A. 1126). Petitioners made no objection to use of the two verdict forms or to the instructions concerning them.

E. THE APPEAL

Petitioners urged in the court of appeals that 18 U.S.C. 610, on its face and as applied by the trial court, was constitutionally defective under Article I, Section 2 of the Constitution and the First, Fifth, Sixth, and Seventeenth Amendments; that the indictment did not allege an offense; that insufficent evidence supported the jury's verdict; and that the jury's determination that a willful violation of 18 U.S.C. 610 was not contemplated required acquittal of conspiracy. In their brief petitioners insisted that these matters required a reversal "without a new trial, and no request is made for a new trial," (Pet. App. 25) and limited the relief sought to "a reversal and discharge of the defendants." The court affirmed with the majority (Van Oosterhout and Blackmun, JJ.) explicitly considering and rejecting each of the grounds urged by petitioners. Judge Heaney, in dissent, objected to the trial court's instructions on the "voluntariness" issue, and concluded that they necessitated a new trial.

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The court then granted petitioners' request for rehearing *en banc*. In a supplemental brief, petitioners adopted the reasoning of Judge Heaney's dissent and asserted that the erroneous instructions on "voluntariness" required a new trial. The *en banc* court affirmed petitioners' convictions *per curiam*, for "the reasons set out in the panel majority opinion * * *." In a separate opinion, the four judges making up the majority further expressed the view that petitioners, by their explicit presentation on the original appeal, "had deliberately and consciously elected to abandon and waive any and all claims of prejudicial trial errors * * *" (Pet. App. 25). Three dissenting judges urged reversal and a new trial for the reasons assigned in Judge Heaney's earlier opinion. Because they thought the statute does not preclude the use of funds voluntarily contributed by union members, they found it unnecessary to consider the constitutional issues.

SUMMARY AND INTRODUCTION TO ARGUMENT

The foundation of petitioners' arguments with respect to the indictment, the evidence, the judge's instructions to the jury, and the constitutionality of the statute itself, is their contention that the courts below "construed Section 610 as prohibiting officers, agents and members of a union from forming a parallel political organization and utilizing the union leaders, officers, and agents in such political organization, in the obtaining, pooling and expending of direct voluntary

contributions for political purposes" (Pet. Br. 79). We believe that petitioners' formulation misstates the holding of the courts below and misconstrues the issues before this Court.[5] The essential charge of the indictment and the theory on which the case was tried was that the Fund, although formally set up as an entity independent of Local 562, was in fact a union fund, controlled by the union, contributions to which were assessed by the union as part of its dues structure, collected from non-members in lieu of dues, and expended, when deemed necessary, for union purposes and the personal use of the directors of the Fund. The trial court unequivocally instructed the jury that in order to convict petitioners, it had to find that the Fund "was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union" (A. 1112). As set forth in the Statement, the trial judge instructed the jury to take into consideration nineteen factors to be considered in

[5] Apart from their substantive defects, there may be independent reasons for rejecting these arguments of petitioners. Insofar as these arguments, if valid, would lead to a new trial rather than discharge of the petitioners, this Court might decide that they were not preserved below, because, as the court of appeals held, they were not raised before the original panel.

Even if petitioners' interpretation of the statute were accurate, this would not lead to a dismissal grounded on the invalidity of the indictment or the insufficiency of the evidence. This indictment properly charged a violation of Section 610, in charging that Local 562 made political contributions (Par. 10; A. 14) whether or not proof of the involuntariness of the contributions to the Fund would be required to sustain a conviction. And there may well have been enough evidence to sustain a conviction under petitioners' theory of what the statute requires.

deciding whether the Fund was or was not a union fund. Among these were the regularity of payments, the method of collection, whether or not contributions to the fund were required as a condition of employment and the voluntariness of the payments. Whether the evidence supports the charge in the indictment and whether Section 610, as applied, is constitutional must be determined on the basis of this interpretation. In other words, the issue which this case presents is whether Congress did—and may validly—prohibit labor unions from using regular union funds to make direct monetary contributions for political purposes to candidates in federal elections.

Our position is (1) that the evidence shows that the Fund was in reality not a separate entity and the Fund's money was in reality union money and (2) that the trial court was entirely correct in the treatment of the issue of voluntariness as merely one element—and not necessarily the conclusive element—in determining whether the political fund was, under the facts here, in reality a union fund.

Petitioners misconstruction of the question presented also answers their constitutional objections. Section 610 as construed and applied in this case has a narrow scope serving the legitimate congressional objectives of preserving the purity of the electoral process and the protection of the rights of dissenting union members, while permitting unions and union members to express their political views and make contributions through separate and voluntary political funds. As applied, Section 610 is neither vague nor does it discriminate

against the laboring class. Finally the jury's verdict was not inconsistent, but merely distinguished between misdemeanor and felony violations of Section 610.

ARGUMENT

I

THE INDICTMENT AND THE EVIDENCE SUBMITTED TO THE JURY UNDER THE COURT'S INSTRUCTIONS PROPERLY CHARGED AN OFFENSE AND SUPPORTED THE CONVICTIONS UNDER 18 U.S.C. 610

Since the petitioners attack the indictment, the sufficiency of the evidence and the propriety of the charge on the same grounds, *viz.*, that they allegedly permitted a conviction of the Union based on political expenditure of a separate political organization deriving its funds from voluntary contributions, it is convenient to deal jointly with the three attacks.[6]

Eighteen U.S.C. 610 provides in pertinent part as follows: "It is unlawful for * * * any * * * labor organization to make a contribution or expenditure in connection with any [federal] election * * *." Petitioners contend that their activity does not fall within the statute because even the indictment does not charge that "political contributions were * * * really made by Local 562, and no contention was ever so made" (Pet. Br. 52). Petitioners appear to contend that the "separateness" of the Fund from Local 562 was a fact conceded in the indictment and proven by the evidence (Pet. Br. 76). However, the identity of

[6] But see note 5, *supra*, p. 23.

the Fund with the Union was the principal allegation of the indictment, the major thrust of the evidence (*supra,* pp. 7–16) and the crux of the charge.

The indictment charged that petitioners established the Fund to "have the appearance of being a wholly independent entity, separate and apart from Local 562," and "thereby conceal the fact that *Local 562 would make contributions and expenditures in connection with certain elections*" (Par. 10; A. 14; emphasis added). The indictment outlined petitioners' scheme to conceal the true nature of their activity and alleged that such activity amounted to an unlawful use by Local 562 of its own regular union funds contrary to 18 U.S.C. 610. Applicable here is the Ninth Circuit's observation in *United States* v. *Lewis Food Company,* 366 F. 2d 710, 713 (C.A. 9):

> In our opinion, the allegation in the indictment that the corporation made an "expenditure" for the stated purpose, necessarily infers an allegation that general corporate funds were used. * * *

Similarly the evidence showed that the monies of the Fund were Union monies and that the Fund itself was indistinguishable from the Union. The evidence of the practical identity of the Fund and the Union has been marshalled above (*supra,* pp. 7–16); it showed (1) that the purported contributions to the Fund were in fact assessments imposed by Local 562; (2) that these "contributions" were part of the dues structure of the Local, evidenced particularly by the required payment of contributions by "out-of-towners"; (3) that assessment and contribution rates were manipulated to meet changing union needs; and (4)

that Fund monies were used for such union purposes as strike benefits, the purchase of land for a union recreation center and a gift fund for petitioner Callanan. In sum, the evidence showed that Local 562 made the political contributions involved here out of its own funds.

Finally, the court charged that before the jury could convict:

> It is necessary, therefore, that the evidence established that the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund was in fact a Union Fund, that the money therein was union money, and that the real contributor to the candidates was the union (A. 1112).[7]

In our view the charge of the indictment and the finding of the jury—based on competent evidence and under careful instructions—that Local 562 made political contributions are sufficient to sustain the convictions. Petitioners argue, however, that the court's charge was erroneous because it permitted the jury to convict without finding that payments to the Fund were "involuntary."

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[7] It is still petitioners' assertion that the Fund was a separate organization similar to the old C.I.O. P.A.C. and the present COPE, and countless other independent political committees supported by voluntary labor contributions (See Pet. Br. 92). If that were all the evidence established here, we would agree that the government failed to make its case. Nor do we dispute appellants' conclusion, following their review of the legislative history of Section 610, that a union could "establish a political organization for the purpose of receiving ear-marked political monies directly from union members * * *" (Pet. Br. 62). Our point is that that is precisely what Local 562 did not do in this case.

It is not necessary for a violation of the statute that payments to the Fund were "involuntary." The fact that all shareholders may agree to a political contribution or expenditure by a corporation out of its treasury would not make such a contribution or expenditure legal. As the Court pointed out in *Lewis Food Company, supra*, p. 713, "The statute itself, however, does not provide an exception when stockholders consent." The same reasoning applies to a labor organization. As the Supreme Court pointed out in *United States* v. *Auto. Workers*, 352 U.S. 567, 589, "[t]he evil at which Congress has struck in § 313 [the predecessor to present Section 610] is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party".

Of course—as we discuss below (*infra*, pp. 36–39)—the legislation has as one of its principal purposes the protection of minority interests from overbearing union leadership; but this is only one of the dual considerations underlying the statute. As this Court pointed out in *United States* v. *C.I.O.*, 335 U.S. 106, 113, with regard to the present statute's earliest legislative antecedent (the Act of January 26, 1907, 34 Stat. 864–865):

> This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate

funds for contribution to political parties without the consent of the stockholders.

The opinion for the Court in the *C.I.O.* case further expressed the view that this same dual purpose applied to the statute's coverage of union activities.[8] At least one of these purposes—the elimination of "the corroding effect of money employed in elections by aggregated power," *United States* v. *Auto. Workers, supra,* 352 U.S. 582—would be clearly served by this conviction even if the payments into the union were wholly voluntary.[9] And the language of the statute covers such a circumstance.

However, in deciding this case the Court need not decide whether a union could—consistent with Section 610—use for political purposes wholly voluntary donations from workers. The evidence at trial and the charge to the jury showed that "voluntary" was used at trial in a way consistent with the assessment of the monies for union purposes and did not imply a free association of workers for political purposes.

The Local members and non-members who spoke of making their payments to the Fund "voluntarily"

[8] As the Court said (335 U.S. at 115): "It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose."

[9] The facts of this case do not present the question of the legality of political contributions by unions of monies collected from donations of members which were truly voluntary, and held segregated for that special purpose and utilized solely for that purpose.

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were saying in essence that they paid willingly. It was in that sense of "voluntary" that the judge charged "the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money" (A. 1116). This kind of willingness or voluntariness does not mean that the payments, regularly collected by union representatives on the basis of a fixed assessment for time worked, were voluntarily made in the sense of a deliberate choice to support certain political ends. Many witnesses testified that they paid their regular union dues "voluntarily" (*e.g.*, A. 324, 437, 462). Many paid their contributions to the Callanan Gift Fund willingly or voluntarily in that sense. But it defies normal understanding to assume that each Local member would contribute exactly the same amount to the Fund—and that each out-of-towner would contribute four times that amount—if he did not regard the payment of this money as part of his obligation to the Union.

We do not question "that a union could establish a political organization for the purpose of receiving ear-marked political monies directly from [voluntary contributons of] union members" (Pet. Br. 62), but that was not done by petitioners. Although the Fund had a separate bookkeeping arrangement, the money was assessed and collected in the same way as union dues. This method was inherently coercive, whether or not deliberate refusals to pay were sanctioned. "Contributions" to the Fund were constantly

referred to as "assessments" (A. 290, 293, 294, 318, 380, 425, 431, 441, 456). The foremen once each week uniformly collected the same amount per day worked from all of the men in their charge (A. 121, 325). Several foremen testified that they knew of no one who refused to pay[10] (A. 170, 187) and at least two foremen were unable to distinguish between these and other assessment charged by the union (A. 297, 320). Each payment was noted in a book which the foreman turned in with the money to the union hall (A. 216). If a workman did not pay for one week, the foreman or steward would write "owe" in the book (A. 161, 256). If a workman had not paid the week before and hence paid double the following week, the foreman often wrote "back assessment" in the book to account for the greater amount (A. 293, 318, 425, 449). Several men testified that they thought such contributions were necessary if one were to get work (A. 201, 212, 270, 402). The evidence here does not show men pooling their resources to support a cause in which they believe, or even each Local member and non-member making a deliberate choice whether to support political ends promoted by the union. Rather, it shows the union assessing workers for a political fund to which the workers "contribute" because they feel it their obligation to do so. The existence of the Callanan Gift Fund proves this point. For three months contributions to the Fund were completely suspended and everybody "contributed" the same

[10]Apart from exceptions such as hardships cases (A. 183, 620–21) and apprentices (A. 181, 307, 454) who were specifically exempted by the union officers.

amount to petitioner Callanan, apparently without complaint or inquiry.

It is not significant that the union was able to produce a number of men who did not contribute to the Fund. For one thing collections seem to have been neglected on various small jobs (*e.g.*, A. 577). More important the union officials, aware of 18 U.S.C. 610, knew that they had no right to demand contributions and it is not surprising that, in the face of a direct refusal to pay, they would usually not try to compel payment. Such compulsion was not required because, by the time covered by this indictment, the Fund was so well established that few workers considered the possibility of non-payment. By then the Fund had been in existence for about fourteen years and had become accepted as a part of Local 562's operation. It was not necessary to employ threats to insure cooperation. Payment of the assessment was a fact of this union's life. These regular, fixed payments may have been made willingly but they were not in any realistic sense voluntary contributions to a non-union political entity.

The trial court, we submit, correctly instructed the jury that it was necessary to look at the total relationship of the Fund to the Union in order to determine whether the Fund was merely the alter ego of the Union and whether the Fund's monies were in reality the Union's monies. In this case, the collection techniques show that the union was using its control over employment to require payments to the Fund. Furthermore, although there was no evidence of a direct flow of cash from the union treasury into the fund, this was accomplished indirectly by collecting fund "contribu-

tions" from non-members in lieu of the travel card fee, which would have gone into the union treasury (A. 271–72). In addition, the disposition of the monies showed that the political fund was not regarded as really separate from the monies of the union. Fund monies were used for strictly union activities like strike benefits and a retirement home. Any of these elements might well be enough to show that there was a violation of the statute. Their combination establishes clearly that this political fund was not a vehicle for workers freely to associate together to express their political beliefs and facilitate the making of contributions to candidates of their choice. The money here expended was, as the jury found, union money collected by use of union power and dispensed as the officials of the union decided.

II

CONGRESS MAY VALIDLY PROHIBIT THE EXPENDITURE OF UNION FUNDS FOR DIRECT POLITICAL CONTRIBUTIONS TO CANDIDATES FOR FEDERAL ELECTIONS

Unlike the situations in which the statute, as applied to labor unions, has previously come before this Court,[11] there is no doubt in this case that the particular activity at issue is a "contribution or expenditure" within the meaning of the statute. There is no doubt that Union funds were expended for direct political contributions to federal candidates, contributions which, under the statute, unions are forbidden to make. The

[11] *United States* v. *C.I.O.*, 335 U.S. 106; *United States* v. *Auto. Workers*, 352 U.S. 567.

constitutional question is whether Congress may validly forbid labor unions from making such direct contributions. By sustaining the indictment in *United States* v. *Auto. Workers*, 352 U.S. 567—and thus holding that there are at least some situations to which the statute may validly be applied—this Court has already determined this issue.[12] Direct contributions from Union funds to political candidates are the core of this statute.

A. THE STATUTE IMPLEMENTS PERMISSIBLE CONGRESSIONAL OBJECTIVES

Section 304 of the Labor-Management Relations Act of 1947, the predecessor of 18 U.S.C. 610, permanently extended to labor organizations the ban against political contributions which had been applied to corporations and national banks since 1907. See *United States* v. *C.I.O.*, 335 U.S. 106, 115. The underlying purpose of this ban is essentially twofold: (1) to prevent the manipulation of the elective process by the great aggregations of wealth assembled by both corporations and unions, and (2) to foreclose the use of general corporate or union funds to support ideas and candidates opposed by a minority of the shareholders or union members. As the Supreme Court expressed the legislative aim in *C.I.O., supra* (335 U.S. at 115):

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[12] Section 610 and its predecessors have been upheld in a number of lower court cases against constitutional attack. *United States* v. *United States Brewers' Association*, 239 Fed. 163 (W.D. Pa.); *United States* v. *Painters Local No. 481*, 79 F. Supp. 516 (D. Conn.), reversed on other grounds, 172 F. 2d 854 (C.A. 2); *United States* v. *Construction and General Lab. Local No. 264*, (W.D. Mo., unreported opinion of October 18, 1951—Case No. 18,039).

> It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose.

Or as stated in *Auto. Workers, supra* (352 U.S. at 575):

> [The statute's] aim was not merely to prevent the subversion of the integrity of the electoral process. Its underlying philosophy was to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government.

In our view, these are legitimate and compelling legislative objectives which as implemented by Section 610 do not place improper restraints on the constitutional rights of unions or union members.

1. The purity of the electoral process

It is established beyond doubt that Congress has the power to enact legislation aimed at preserving the purity of the electoral process.[13] *Burroughs and Cannon* v. *United States,* 290 U.S. 534; *Smiley* v. *Holm,* 285 U.S. 355, 360; *Ex Parte Yarbrough,* 110 U.S. 651. In the *Burroughs* case the Court said:

> To say that Congress is without power to pass appropriate legislation to safeguard [a Presidential] election from the improper use of money to influence the result is to deny to the

[13] Pertinent constitutional provisions are Art. 1, §§ 2, 4, 8, Clause 18 and the Seventeenth Amendment.

nation in a vital particular the power of self-protection. 290 U.S. at 545.

In *United Public Workers* v. *Mitchell,* 330 U.S. 75, the Court sustained the congressional power to forbid any employee of the federal executive branch from "taking 'any active part in political management or political campaigns.' " The *Mitchell* decision was based on *Ex Parte Curtis,* 106 U.S. 371, in which "[t]he right to contribute money through fellow employees * * * was held not to be protected by any constitutional provision." 330 U.S. at 97. See also *United States* v. *Wurzbach,* 280 U.S. 396. The prohibition of contributions by aggregates of wealth such as corporations and unions is an appropriate means for safeguarding the electoral process.

2. The protection of the rights of individual members

Congress recognized that, in modern times, unions have become powerful quasi-governments in their own right with "taxes", elected officials, and a hierarchy of power.[14] Like any other aggregation of power, while they are subject to certain constraints imposed by other entities, they nevertheless have considerable control over the destiny of their constituency. They directly influence the basic economic issues of their members'

[14] In 1968 according to the Bureau of Labor Statistics, 20,733,000 workers belonged to a union, the great bulk of these under one oganization, the AFL–CIO. Union treasuries controlled $2,970,000,000 in 1567. 1969 *Statistical Abstract,* p. 238. From Dept. of Labor, Office of Labor Management and Welfare Pension Reports. (This figure includes cash on hand, investment assets and union administered pension plans. It excludes corporate administered pension plans which benefit union members.)

lives: whether they will or will not work, what they will do and how much they will be paid. With respect to the construction trade, petitioners put this point eloquently (Pet. Br. 54):

> To construction union workers, who move from employer to employer without any company identification, the union constitutes many things that to others are divided. It is not just their representative in dealing with employers concerning grievances, wages, etc.; it is, indeed, also the source of their employment and the source of their pensions, sick, vacation and other fringe benefits. Unlike other workers, the construction union represents to them both company-employer and union. It is all they have to look to for existence and security.

The very concentration of authority which gives unions their legitimate bargaining power contains risks—common to any system of majority rule—of improper suppression of minority or individual interests. As Justice Frankfurter noted, concurring in *A.F. of L.* v. *American Sash Co.*, 335 U.S. 538, 545:

> If concern for the individual justifies incorporating in the Constitution itself devices to curb public authority, a legislative judgment that his protection requires the regulation of the private power of unions cannot be dismissed as unsupportable. A union is no more than a medium through which individuals are able to act together; union power was begotten of individual helplessness. But that power can come into being only when, and continue to exist only so long as, individual aims are seen to be shared in common with other members of the group.

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> There is a natural emphasis, however, on what is shared and a resulting tendency to subordinate the inconsistent interests and impulses of individuals. * * *

Because the union is vital to the worker's economic well-being, the union-worker relationship is peculiarly susceptible of undue influence. While a citizen may feel perfectly free to write his Congressman or state legislator about some wrong done him by the federal or state government, he may be somewhat more reluctant to criticize union management, fearing that when union officials look around the hall to pick men for a job they might look past the trouble-maker.

A union member may find irresistible the union's demand—through its steward on the jobsite—for contributions fixed as a regular percentage of days worked and money earned. Section 610 reduces this institutional pressure by forbidding the unions from making direct political contributions from money that is effectively assessed. This reduces the union's interest in enforcing contributions from members, while leaving the members free to express their political views and make political contributions through a political action organization.

In *International Association of Machinists* v. *Street*, 367 U.S. 740, 766, discerning a "congressional concern over possible impingements on the interests of individual dissenters from union policies," this Court recognized the right of a vocal dissenter not to pay assessments to support political policies with which he disagreed. However, given the pervasive role of the union in the lives of members, such vocal protest may be expected to be a rarity. Indeed, the very

difficulty of estimating the effect on union members of pressures short of explicit sanctions, indicates the propriety of the broader prohibitions of Section 610 which are not restricted to giving dissenters the power to "opt out" and do not attempt to draw a sharp distinction between "voluntary" and "involuntary" payments.

Just as the federal government must be constantly subject to scrutiny against impingements, subtle or overt, on the right to free expression, so must union and corporate "governments" be subject to similar examination. As Mr. Justice Douglas noted, concurring in *Street, supra*, p. 776, "[o]nce an association with others is compelled by the facts of life, special safeguards are necessary lest the spirit of the First, Fourth, and Fifth Amendments be lost and we all succumb to regimentation."

B. THE STATUTE DOES NOT VIOLATE THE CONSTITUTIONAL RIGHTS OF LABOR UNIONS OR THEIR MEMBERS

1. The First Amendment

As with their attack on the indictment, the evidence and the charge, petitioners predicate their constitutional argument on the proposition that Section 610, as applied, prohibits "officers, agents and members of the union from forming a parellel political organization and utilizing the union leaders, officers and agents in such political organization, in the obtaining, pooling and expending of direct voluntary contributions for political purposes" (Pet. Br. 79). We believe that petitioners' formulation begs the constitutional question. It is the very fact that Section 610 does not

apply to prevent the formation of "parallel political organization[s]" to give public expression to union political sentiment that points to its legitimate and narrow reach. Thus as Senator Taft, the sponsor of the 1947 legislation, made clear: "If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that" (93 Cong. Rec. 6439, 6440). There is no bar to the formation of voluntary political organizations by which union majorities may express their political sentiments. Nor has there been any hesitancy in the formation of such organizations, through which labor's voice may be heard.[15]

In our view the constitutional question presented is a narrow one: Whether a union, which, like a corporation, is organized for other than political purposes, may be barred from making direct contributions to candidates out of its general funds.

The barring of such direct contributions does not unduly restrict the collective voice of the union. Even the general funds of the union may be used for a variety of political activities, though it may not make

[15] The application of Section 610 to such organizations as COPE; Trainmen's Political Educational League; Amalgamated Meatcutters and Butcher Workmen of North America, COPE; the Int'l. Ladies Garment Workers Union, 1964 Campaign Committee, New York, N.Y.; state A.F.L.-C.I.O. COPE; and G.B.B.A. Political Education League, and to other political committees is not raised by the facts in this case, and is therefore not properly before this Court. It is enough to note, however, as we have indicated in the text, that to the extent that these are voluntary political organizations by which persons who are union members give public expression to their political views, they are not within the reach of Section 610.

a direct financial contribution to the campaign on behalf of particular federal candidates.[16] Congress could legitimately conclude that the ban on direct electioneering did not significantly impinge on the right of unions to express their views, while at the same time it furthered the narrow, well-defined and highly important objectives discussed above—to reduce undue institutional influence by unions on federal elections, to preserve the purity of such elections against the use of aggregated wealth, and to protect union members holding political views contrary to the unions. Indeed, even the dissenting opinion in *Auto. Workers, supra*, 352 U.S. at 598, n. 2, recognizes that contributions and expenditures may stand upon different constitutional footing than expression of political opinion in other ways.

Nor does the bar on direct contributions from regular union funds infringe the rights of individual members of the union. As noted above Section 610 does not bar the formation of voluntary political organizations by unions or union members to express the political sentiments of members, even by the pooling of money voluntarily contributed for the purpose of making political contributions. To the contrary, the protection of

[16] See Rauh, *Legality of Union Political Expenditures*, 34 So. Cal. L. Rev. 152, for a discussion of how little § 610 limits union political activity. For example, the statute does not apply to state elections. Furthermore, regular union periodicals or newspapers financed with union funds may contain political material and be distributed to those accustomed to receiving copies. See *C.I.O., supra*. Nonpartisan registration drives are similarly outside the ambit of the statute and distributions of voting records of candidates are also legitimate.

minority interests serves a legitimate purpose which does not run afoul of the First Amendment. Indeed, "coercive elimination of dissent" is the very antithesis of the "freedom to differ" which the First Amendment was designed to protect. *Board of Education* v. *Barnette*, 319 U.S. 624, 641–642. The amendment rests on the premise "that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press* v. *United States*, 326 U.S. 1, 20. Or, as more recently stated in the reapportionment decisions, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live" *Wesberry* v. *Sanders*, 376 U.S. 1, 17; *Reynolds* v. *Sims*, 377 U.S. 533, 555. In sustaining that right by preventing union majorities from dictating to minorities the statute protects, rather than restricts, First Amendment freedoms.

2. Alleged Overbreadth, Vagueness and Lack of Fair Notice

Petitioner's arguments as to the alleged vagueness of the statute amount essentially to a complaint that their plan to avoid the statute has proved less successful than they had hoped. The statute is not rendered vague by the fact that a subterfuge was proved to be such. The statute is clear in prohibiting what was done here—the contribution of union money to candidates in federal elections. There is no issue here as to the scope of "expenditure" or what type of expenditure is within the reach of the statute—one of the problems that troubled the concurring Justices in *United States*

v. *C.I.O.*, 335 U.S. 106, 151. Here we are dealing simply with a direct "contribution" by a "labor organization" to candidates for Federal office. These are not vague or indefinite words, but reach a precise and readily ascertainable type of conduct. See *United States* v. *O'Brien*, 391 U.S. 367, 381. They convey a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more." *United States* v. *Petrillo*, 332 U.S. 1, 8; *Roth* v. *United States*, 354 U.S. 476, 491–492.

The fact that a case may turn on a contested factual issue—in this case, whether the Fund was a Union fund, its monies Union monies—does not render the statute vague.[17] "That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense." *United States* v. *Petrillo*, *supra*, 332 U.S. at 7.

3. The claim of arbitrary discrimination

There is no substance to the claim that by virtue of the convictions in this case workers are practically prohibited from political action in any form, while those opposed to labor are given free reign to influence elections. As we have already stressed, the power of

[17] Men can, on pain of criminal sanction, constitutionally be required to make numerous decisions involving close factual questions. See, *e.g.*, *United States* v. *Alford*, 274 U.S. 264; *United States* v. *Ragen*, 314 U.S. 513; *United States* v. *Petrillo*, 332 U.S. 1.

union majorities to express their collective political sentiments through voluntary political organizations is not covered by the statute. Accordingly, it is clear that members of a union remain free under Section 610 to associate for political purposes, including making contributions to federal candidates.

Moreover that Congress chose in Section 610 to deal only with the political contributions of national banks, corporations and labor unions hardly establishes unconstitutional discrimination. As the Supreme Court has held, Congress may act selectively, and a prohibition within its power directed at a particular class is not rendered invalid because it does not also reach every other class upon which Congress may constitutionally place similar limitations. *United States* v. *Maryland Savings-Share Ins. Corp.*, 400 U.S. 4; *United States* v. *Petrillo*, 332 U.S. 1, 8–9.

III

THE JURY VERDICT DID NOT ENTITLE PETITIONERS TO AN ACQUITTAL

Petitioners argue that since the jury found that "a willful violation of Section 610 of Title 18, United States Code, was not contemplated," it must also have found that the conspiracy was not willful—*i.e.*, that the agreement was not with intent to violate Section 610. By virtue of this finding, so the argument runs, the jury should have acquitted appellants for, in order to be guilty, the alleged conspirators must have known that the object of the conspiracy was unlawful—the very finding precluded by the jury's determination

that petitioners' violation of Section 610 was not willful (See Pet. 29–30). But this argument is not convincing. The charge and verdict are entirely consistent with the penalty provisions of the statute.[18]

The trial court repeatedly made clear in its charge that in order to convict of the conspiracy the jury had to find that the conspiracy was willful (A. 1117)—i.e., "done voluntarily and purposely and with the specific intent to do that which the law forbids; that is to say, with bad purpose either to disobey or to disregard the law" (A. 1110; see similarly A. 1109, 1111, 1117–1118). Moreover, the verdict form returned by the jury contained the conclusion that each defendant was found "guilty as charged in the indictment" (A. 1125–1126) and the indictment alleged that the petitioners "unlawfully, wilfully, and knowingly" conspired (A. 14). In short, in finding petitioners guilty of the conspiracy the jury must have found it to be willful in the sense that petitioners knew they were conspiring to make political contributions from union funds, the only sense of willfulness required for a conspiracy conviction under this statute.

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[18] The penalty provision of Section 610 provides:

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and *if the violation was willful*, shall be fined not more than $10,000 or imprisoned not more than two years, or both" (emphasis added).

Petitioners rest their argument essentially on an instruction coming near the end of the charge (A. 1119):

> * * * you are instructed that if under the evidence and the other instructions you find the defendants, or any of them, guilty of willfully conspiring to * * * [violate] * * * Section 610, but find that said conspiracy did not contemplate a willful violation of Section 610, then your verdict of guilty should so state.

Petitioners should not be heard to base their argument on this instruction since it plainly contemplated the possibility of the verdict in fact rendered, and when it was read by the court prior to the charge to the jury, one of the defense counsel stated that he had, "[n]o objection" (A. 1095). See Rule 30, Fed. R. Crim. P.; *White* v. *United States*, 394 F. 2d 49 (C.A. 9).

When examined in light of the entire charge and in view of the fact that a conviction under Section 610 may be either a felony or a misdemeanor, both the instruction and the verdict are intelligible. The judge instructed the jury on how to return a verdict which would be responsive to the penalty provisions of the statute. The conclusion to be drawn from the jury verdict in light of the charge is that, while the jurors believed Local 562 and the individual petitioners con-

spired to have Local 562 make political contributions—the conduct which Section 610 proscribes—they may have concluded that petitioners had not acted with intent to flout the law, and that their conduct was not "willful" in that sense. Cf. *United States* v. *International Minerals & Chemical Corp.*, 402 U.S. 558. Contrary to petitioners' suggestion, "[t]here need not, of course, be proof that the conspirators were aware of the criminality of their objective" (*Ingram* v. *United States*, 360 U.S. 672, 678). Alternatively, it is possible that given the judge's instructions, the jury believed petitioners conspired knowing that what they did was in violation of Section 610, but that the jury did not think petitioners had a sinister or corrupt motive.

If the failure of the jury to find petitioners guilty of a felony is, contrary to what we have suggested, viewed as inconsistent with their verdict of a misdemeanor violation of Section 610, that would still not undercut the verdict. The verdict would not then differ materially from cases in which courts have ruled that inconsistent verdicts do not require reversals of convictions. *E.g.*, *Dunn* v. *United States*, 284 U.S. 390; see *United States* v. *Dotterweich*, 320 U.S. 277, 279; *United States* v. *Carbone*, 378 F. 2d 420, 422–423 (C.A. 2), certiorari denied, 389 U.S. 914.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be affi

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No. 70-74

Supreme Court of the United States

October Term, 1971

PIPEFITTERS LOCAL UNION No. 562, *et al.*,
Petitioners

v.

UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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Supreme Court of the United States

October Term, 1971

No. 70-74

PIPEFITTERS LOCAL UNION No. 562, *et al.*,
Petitioners

v.

UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus* in support of the position of the petitioners is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties as provided for in Rule 42(2) of the Rules of this Court.

INTEREST OF THE AFL-CIO

The AFL-CIO is a federation of 121 national and international labor unions having a total membership of approximately 13,500,000 working men and women.

Organized labor considers the right to associate to promote political interests to be a fundamental constitutional

freedom, and believes that full utilization of this right is both a civic duty and a practical necessity. For the trade union movement knows that its ability successfully to represent its members at the bargaining table depends on its ability to preserve, strengthen and supplement laws such as the National Labor Relations Act, 29 U.S.C. § 141 *et seq.*; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; the Walsh-Healy Act, 41 U.S.C. § 35 *et seq.*; and the Davis-Bacon Act, 40 U.S.C. § 276(a) *et seq.*

As the means of accomplishing their political objectives, many unions have set up labor political committees as an integral subdivision of the union itself. These political arms of organized labor serve a dual function: utilizing dues, they engage in educational activity directed at the union's members; and utilizing political donations tendered by their members, which are kept in separate segregated funds, they channel a flow of contributions and expenditures in connection with federal elections. Labor has structured its political activities in this fashion because the language and legislative history of 18 U.S.C. § 610, the decisions of this Court, and the stated views of the Department of Justice have made it perfectly plain that this course of conduct is lawful.

The courts below held that only "separate and distinct entities [which] . . . would not constitute labor organizations" may make contributions in connection with federal elections. A. 1134. This ruling, if sustained, would require far-reaching changes in labor's political activities which would be detrimental to the best interests of trade unions and their members; and it would also open the possibility that unions and their officers might be charged

with violating the criminal law by following a course widely and rationally believed to be completely lawful. In light of these considerations, the interest of the AFL-CIO is manifest.

ARGUMENT

The instant case was submitted to the jury on the theory that the Government satisfies the burden placed upon it by 18 U.S.C. § 610 if it proves that a federal political contribution "is in fact and in the final analysis made by the [indicted] labor organization." A. 1132. Both the District Court's jury instructions and the Court of Appeals' opinion make it crystal clear that, insofar as the lower courts were concerned, "the essential elements of a § 610 offense are (1) contribution or expenditure, (2) by a labor organization, (3) for the purpose of active electioneering, (4) in connection with an election for named federal offices described in the statute" (A. 1133), and that the Government is not required to demonstrate that such contributions or expenditures were financed by union dues (A. 1132-1134).

It is our position that Congress' sole intent in enacting § 610 was to forbid contributions and expenditures[1] financed by union dues; and that it was not part of the legislative purpose underlying that Section to prohibit such

[1] The exact content of the terms "contribution and expenditure" as used in § 610 and the exact line of demarcation between the two are matters of considerable complexity. See, e.g., *United States* v. *CIO*, 335 U.S. 106; *United States* v. *International Union UAW*, 352 U.S. 567. However, in the instant case it is not denied that contributions were made. Thus we do not treat with the question of the extent to which § 610 covers the full range of activities that could be said to have political ramifications.

contributions and expenditures by labor political committees financed by donations from individual workers tendered for the direct support of political activity.[2] This, too, was the stated position of Senator Taft in the debates on § 610 and of the Government in its brief to this Court in *United States* v. *International Union UAW*, 352 U.S. 567, and is the clear implication of this Court's opinions in *United States* v. *CIO*, 335 U.S. 106, 125, and *International Union UAW*, 352 U.S. at 592. See pp. 9-10, 13-15 *infra*. And based on these authoritative pronouncements labor political committees have openly made federal political contributions and expenditures financed by individual political donations for over twenty years.

To obtain a conviction in the instant case, the Government was, therefore, required to prove beyond a reasonable

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[2] The term "union dues" as used herein refers to payments that must be made as a condition of continued membership and/or employment. This definition follows from the Department of Justice's conclusion that the term "membership dues" in § 302 of the Taft-Hartley Act includes the initiation fees, assessments, and periodic dues which must be paid as "incidents of membership" (22 LRRM 47), and this Court's holding in *NLRB* v. *General Motors*, 373 U.S. 734, that the term "periodic dues" in § 8(a)(3) covers the agency shop fee required of non-members as a condition of employment.

In contrast, as Senator Taft stated in the Senate debate on § 610, the political donations that unions may utilize for contributions and expenditures are payments "made directly to the support of a labor political organization" by workers "who know what the money is to be used for" and who have not been "forced to contribute" (93 Cong. Rec. 6440, see p. 10, *infra*): in other words, voluntary payments tendered for the express purpose of supporting union political activity which the worker may make or not without forfeiting union membership or employment rights.

doubt (cf. *In Re Winship*, 398 U.S. 358) that the political contributions admittedly made by the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund were financed by union dues; it was not sufficient to simply prove that the Political Fund was a labor organization.[3] By relieving the Government of the burden of proving this essential element of the crime charged, the courts below committed plain error.[4]

1(a) Only "political committees," entities which have "a chairman and a treasurer" (2 U.S.C. § 242), and which keep the accounts and records, and file the reports, required by 2 U.S.C. §§ 242 & 244, may make or receive political contributions or expenditures in connection with a federal elec-

[3] Section 610 also prohibits the utilization of corporate treasury funds for the making of contributions and expenditures while allowing corporate political committees to collect and expend political donations. Because of the nature of this prosecution, our sole reference throughout will be to the situation of labor organizations. However, our analysis of § 610 is, of course, fully applicable to a case involving a corporation.

[4] The Court of Appeals was divided as to whether the Petitioners had adequately preserved their objections to the jury instructions on appeal. A. 1156-1159, 1166-1178. It is unnecessary, however, to pursue the inquiry into that question at this stage of the instant proceeding. For this "Court has the power to notice a 'plain error' though it is not assigned or specified." *Silber* v. *United States*, 370 U.S. 717, 718. And as stated in *Screws* v. *United States*, 325 U.S. 91, 107:

> "Where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our own motion. Even those guilty of the most heinous offenses are entitled to a fair trial. Whatever the degree of guilt, those charged with a Federal crime are entitled to be tried by the standards of guilt which Congress has prescribed."

tion in two or more states. 2 U.S.C. § 241(c); 18 U.S.C. § 591.[5] As the legislative history confirms, § 610 means that all political committees, including those which have no connection with a labor organization, are barred from utilizing funds drawn from union dues to make a federal political contribution or expenditure. See 93 Cong. Rec. 6438.[6] Thus the crux of the dispute here is whether unions may establish and direct the activities of labor political committees which utilize donations tendered by individual workers with the express purpose of supporting union political activities. For the lower courts proceeded on the premise that only "separate and distinct entities [which] . . . would not constitute a labor organization" (A. 1134) may make contributions and expenditures and that a political committee which is an integral part of a union may not make contributions, even though "the payments to the [political] fund may have been made voluntarily by . . . all of the contributors thereto . . ." (A. 1133, n. 1). Thus, as the Government aptly

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[5] Since national and international unions carry on their political activities in more than one state and have therefore established their political committees in conformity with the foregoing provisions, we shall for simplicity's sake refer throughout to contributions and expenditures by labor political committees.

[6] "Mr. BARKLEY . . . . [S]uppose the National Association of Manufacturers, out of the funds contributed to it, bought a page in a newspaper, and advertised for or against some candidate . . . Would they be prohibited, under the present law, or under the conference bill, out of funds contributed by corporations into the general fund of the association, from buying newspaper space to advocate or oppose a candidate for public office, directly or indirectly . . ."

"Mr. TAFT . . . [S]o long as the money comes from corporations, and with their knowledge, I think it would be clearly illegal . . . and they would be participating as corporations in spending for political purposes."

noted in its Brief In Opposition (at p. 18), the jury in the instant case was instructed to find a violation if it came to the conclusion that the Political Fund in question here "was in truth a union operation" even though none of the contributions made by that Fund were financed by union dues.

(b) To be sure, the language of § 610[7] will bear the interpretation placed on it by the courts below. Where a political committee is part and parcel of a labor organization, it would be sheer formalism to permit a contribution by the committee that the union itself would be prohibited from making. See n. 6, *supra*. Thus, if the intent of Congress had really been to reach all contributions and expenditures made in the name of a union, without regard to the source of the funds utilized, it would follow that proof that a labor organization controlled a political committee, and that the committee made a contribution, would be sufficient to make out a violation of § 610.

But the possibility of such a reading is not, of course, the end of the matter. For the language of § 610 is equally subject to another interpretation. In common parlance, an organization is said to make a contribution only if it is utilizing its own treasury funds. If the organization is simply aggregating individual donations and passing them on to the intended beneficiary, the normal conception is that it is the individual donors rather than the organization who are the contributors. As Mr. Justice Frankfurter put the point during the oral argument in *International Union UAW*, 352 U.S. 567:

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[7] "It is unlawful . . . for . . . any labor organization to make a contribution or expenditure in connection with any [federal] election . . ."

> "You don't need [the legislative history of § 610] to reach [the] conclusion [that labor union contributions financed by voluntary donations are not prohibited by the law]. If you will just read the statute, 'any labor organization that makes a contribution'—if [the unions] are just the conduit of other people's money, then [they] are not making the contribution." Transcript Of The Oral Argument in No. 44, October Term 1956, p. 59.

And when it is consulted, the legislative history demonstrates that it is Justice Frankfurter's readings of § 610, rather than that adopted below, which "reconstitute[s] the gamut of values current at the time when the words were uttered." *National Woodwork Mfrs. Assoc.* v. *NLRB*, 386 U.S. 612, 620, quoting Judge Learned Hand.

(c) Section 610, as it presently appears, became law as part of the Labor Management Relations Act of 1947, 29 U.S.C. § 141 *et seq.* (Taft-Hartley).[8] The original Senate version of the LMRA, S. 1126, 80th Cong., 1st Sess., did not include this provision; it was, however, included in the House bill as § 304 of H.R. 3020, 80th Cong., 1st Sess.[9] The

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[8] The antecedents of § 610 are fully described in *International Union UAW*, 352 U.S. at 570-587.

[9] The extremely sparse legislative history in the House throws little light on the intent of the supporters of § 610 in that body. House Rept. No. 245 on H.R. 3020, p. 46, simply tracks the provision and contains no discussion of its implications; there was no House debate on this Section. Indeed, the only statement setting forth a rationale for § 610 was made by Representative Robsion after the House had voted to override President Truman's veto. 93 Cong. Rec. 6220. And Representative Robsion's remarks, which stress the theme that it is unfair to the minority to allow unions to use general funds which have been paid in by all of the members

Senate conferees, who were under the leadership of Senator Taft, agreed to accede to the House as to § 610's inclusion in Taft-Hartley. House Conf. Rept. No. 510 on H.R. 3020, 80th Cong., 1st Sess., pp. 67-68. A broad-gauged Senate debate followed that decision, consisting of a lengthy dialogue exploring the ramifications of § 610, between Senator Taft supporting and explicating the conferees' action, and Senators Magnuson, Pepper, Barkley, Kilgore and Taylor opposing the conferees' decision. See 93 Cong. Rec. 6436-6440, 6445-6448; see also *id.* at 6522-6523 (Senators Ellender and Pepper).[10] During this discussion Senator Taft assured the Senate, in the most explicit terms, that "labor political organizations" could "receive . . . and spend . . . direct contributions" by union members and that the purpose of § 610 was simply to prohibit contributions and expenditures financed by the "members' dues." And Senator Taft's representations make it plain that these "labor political organizations" could lawfully be an integral part of a union, set up by the union and administered by the union's officers; they were not required to be "separate and distinct entit[ies]" free of union control. In summarizing his construction of the statute the Senator stated:

> "[U]nions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members

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regardless of their political views, to support a candidate, are, of course, consistent with the view that union political activity supported by individual political donations is permissible.

[10] The essence of this debate is quoted and discussed in *CIO*, 335 U.S. at 113-123.

of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose . . . We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator [Magnuson of Washington] think the union members should be forced to contribute, without being asked to do so specifically, and without having a right to withdraw their payments, to the election of someone whom they do not favor? . . . Why should they be forced to contribute money for the election of someone to whose election they are opposed? If they are asked to contribute directly . . . to the support of a labor political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. But the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders." 93 Cong. Rec. 6440.[11]

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[11] The position that the legality of contributions and expenditures financed by individual donations made for the purpose of supporting union political activity should be distinguished from such contributions and expenditures financed by union dues was common ground for the members of the Republican leadership in charge of Taft-Hartley. Thus the statement by Senator Taft just quoted echoes the views expressed by Senators Ball and Ferguson in Senate Rept. No. 101, 79th Cong. 1st Sess. p. 24:

> "[The] use of union funds to support a particular candidate or course of political action is wrong in that it opens the way for use of money paid in by individuals for political action which they, as a minority would oppose, [we therefore] believe the Federal law should be clarified so that the prohibi-

Senator Taft's approving reference to PAC (the Congress of Industrial Organization's Political Action Committee) in the foregoing is especially instructive. From the moment of its establishment in 1943, CIO-PAC was the most active of the labor political committees and was regarded as the prototype of all such committees. Because of its importance it had been the subject of three congressional investigations by 1947. See House Rept. No. 2093, 78th Cong., 2nd Sess., pp. 4-6; Senate Rept. No. 101, 79th Cong., 1st Sess., pp. 20-24; House Rept. No. 2737, 79th Cong., 2nd Sess., p. 30. The foregoing Reports leave no doubt that CIO-PAC was, as the CIO candidly admitted in a letter reprinted in Senate Rept. No. 101, *supra*, p. 22, "an instrumentality" of the CIO, and not a "separate and distinct" entity.[12] As the Senate Report notes (at pp. 20-22):

> "On July 7, 1943, the executive board of the Congress of Industrial Organizations organized the Political Action Committe and charged it with the task of conducting a program of political education. The Congress of Industrial Organizations, meeting in conven-

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tion on use of such union funds would apply to primary elections and political conventions and to expenditures as well as contributions by unions . . . If the Political Action Committee had been organized on a voluntary basis and obtained its funds from voluntary individual contributions from the beginning, there could be no quarrel with its activities or program and in fact both are desirable in a democracy."

[12] Senate Rept. No. 101, *supra*, pp. 57-58, 72-73 (discussing Senator Taft's complaints about aspects of the campaign tactics employed by PAC in opposition to his 1944 bid for reelection) also emphasizes the point that the Senator's reference to PAC were to an organization he had been required to deal with in partisan political combat and not a lifeless abstraction of minor academic interest to him.

tion at Philadelphia, Pa., in November 1943, approved the program of the Political Action Committee.

* * * * *

"Originally the Political Actions Committee received its funds from trade-unions affiliated with the Congress of Industrial Organizations. The money was transferred from the union treasuries after the general executive board of the union had approved the action . . . [These union funds were supplemented by] voluntary contributions in the sum of $1 from the individual members of the Congress of Industrial Organizations.

* * * * *

"The seventh annual Congress of Industrial Organizations convention, held at Chicago in November 1944, voted to continue the Political Action Committee and expand its organization under the chairmanship of Sidney Hillman. The committee was instructed to intensify its program of political education and to prepare the ground work for extensive participation in the local, State, and congressional elections of 1946."

Moreover, while Senate Rept. No. 101 does not emphasize the point, it was a matter of public record, and common knowledge: first, that the original leaders of CIO-PAC were the Presidents of the Amalgamated Clothing Workers (ACW), the Automobile Workers, the Rubber Workers and the Electrical Workers (UE), and the Vice President of the Steelworkers; and, second, that in 1946 when Sidney Hillman of the ACW, who was PAC's first chairman, died, that "the committee, by action of the CIO Executive Board, was enlarged to include the vice presidents of the CIO; and an executive board, consisting of the presidents and secretary-treasurers of the five largest [CIO] unions and a director" was formed. Kroll, *The CIO-PAC* in

Hardeman & Neufeld, Eds., The House of Labor, 118-120.[13] In light of this compelling evidence of the closest interrelationship, it was only natural that the Senate Committee investigating the 1944 elections took the view that CIO-PAC's activities were covered by the Smith-Connally Act,[14] and concluded that PAC had "function[ed] within the law" in utilizing union dues to make expenditures and primary contributions on the ground that Smith-Connally reached neither primary elections nor expenditures. Senate Rept. No. 101, *supra*, at p. 23.

The short of the matter is that Senator Taft's statements plainly demonstrate that a labor political committee created by and administered by a union is entitled to make federal political contributions and expenditures financed by political donations from workers. In light of the fact that he was required to secure sufficient support to override a certain veto, Senator Taft's limiting explanations of the scope of the various prohibitions of Taft-Hartley are to be accorded the most substantial weight. See, e.g., *ANPA* v. *NLRB*, 345 U.S. 100, 107-111; *Bus Employees* v. *Wisconsin Board*, 340 U.S. 383, 392 n. 15, 395 n. 21. Thus, while there has not been an occasion for a square holding, this Court has twice indicated that § 610 does not prohibit union contributions and expenditures financed by voluntary money. In *CIO*, 335 U.S. at 123, it was noted that "Senator Taft stated on the Senate floor that funds voluntarily contributed for elec-

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[13] Mr. Kroll was the CIO-PAC's first director.

[14] "It is unlawful for any . . . labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for . . ."

tion purposes might be used without violating the section . . ." And in *International Union, UAW,* in demarcating the matters to be decided on remand, the Court stated the first issue as follows: "[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?" (352 U.S. at 592).

In fact, this construction of §610 is so plainly compelled by the legislative history that the Government in *International Union UAW* explicitly conceded:

> "Actual experience demonstrates that the statute, under the construction given it by the Court in the *C.I.O.* decision, has not silenced the political voice of labor unions. It has, instead, proved to be a regulatory measure which has made it possible to discriminate between the legitimate expression of the union's views to its membership, for which general funds may properly be used, and more purely political activities, for which only special funds contributed voluntarily by the membership are properly used.
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> • • • •
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> "Under the *C.I.O.* decision, the general funds of the union may be used for a wide variety of political activities. Even active political endorsement is permissible through the medium of regular union newspapers and other house organs directed primarily to the membership. It is only when the union undertakes active electioneering, on behalf of particular federal candidates and designed to reach the public at large, that general funds of all the members may not be used. Such activities must, under the statute, be financed instead by the voluntary contributions of those union members whose views coincide with the official union position." Brief

for the United States in No. 44 October Term 1956, pp. 37-38, 51.

And, of course, neither the language of § 610 nor the relevant legislative history has changed in the interim.

2(a) The foregoing, we submit, conclusively establishes that the decision below is contrary to Congress' intent. But even assuming *arguendo* that the legislative history does not, as we believe, demand the narrower construction of that Section advocated herein, there can be no doubt that the Senate debates demonstrate that our reading of § 610 is a rational and permissible one. And this is sufficient to require the rejection of the lower court's broad interpretation of § 610. For, as this Court stated in *CIO*, the first case testing the validity of the provision:

> "The obligation rests . . . upon this Court in construing congressional enactments to take care to interpret them so as to avoid a danger of unconstitutionality.
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> • • • •
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> "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity." 335 U.S. at 120-121 & n. 20.

And, as we now demonstrate, § 610 is unconstitutional if construed to outlaw all federal contributions and expenditures by a labor organization.

(b) Organized workers have a set of distinct economic interests which they can protect effectively only by engaging in political activity. The manner in which the federal

government exercises its broad powers to regulate the economy is a crucial determinant of the ability of union members to achieve the job security at fair wages in a decent work place which is their objective. The decisions reached by the officials selected in federal elections and their appointees as to the level of the federal minimum wage, the nature of federal safety rules, the metes and bounds of the right to strike, the range of issues open to collective negotiation, and even, as recent events indicate, the extent to which benefits specified in a negotiated agreement between labor and management are to be enjoyed, all have a direct and immediate effect on the day-to-day conduct of labor relations. Moreover, viewed in a broader context, the quest for job security is as much affected by this country's trade policy as it is by a no-subcontracting clause, and the desire for a better standard of living by general monetary and fiscal policy as by the hourly wage rate set in a collective agreement. This direct interrelationship between political activity and basic union economic objectives is, of course, even more manifest in the case of government employees. Thus, as Mr. Justice Frankfurter stated in *Machinists* v. *Street,* 367 U.S. 740, 814-816 (dissenting opinion, footnotes omitted):

> "If higher wages and shorter hours are prime ends of a union in bargaining collectively, these goals may often be more effectively achieved by lobbying and the support of sympathetic candidates."
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> "The notion that economic and political concerns are separable is pre-Victorian . . . It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for industry or finance. Neither is it true for labor . . . Fifty years ago

this Court held that there was no connection between outlawry of 'yellow dog contracts' on interstate railroads and interstate commerce, and therefore found unconstitutional legislation directed against the evils of these agreements. Is it any more consonant with the facts of life today, than was this holding in *Adair* v. *United States*, 208 U.S. 161, to say that the tax policies of the National Government—the scheme of rates and exemptions—have no close relation to the wages of workers; that legislative developments like the Tennessee Valley Authority do not intimately touch the lives of workers within their respective regions; that national measures furthering health and education do not directly bear on the lives of industrial workers; that candidates who support these movements do not stand in different relation to labor's narrowest economic interests than avowed opponents of these measures?" [15]

(c) Workers look at their union as the natural instru-

[15] In *Street* the issue that divided the Court was whether a holding that unions had the right to use dues collected under a union shop agreement to support candidates opposed by a minority of the members would violate the First Amendment rights of the dissenters. And we do not read the majority opinion as rejecting the point that there is an inextricable interrelationship between political and economic action made in the portion of the dissent just quoted. Rather, it proceeds on the premise that the First Amendment rights of the majority must be balanced against the First Amendment rights of the dissenters, and that the "[railroad] unions must not support [political] activities, against the expressed wishes of a dissenting employee, with his exacted money" (367 U.S. at 770). Since the only issue here is whether Congress can bar unions from utilizing political donations tendered by union members who agree with, rather than dissent from, the union's political program, the result reached in *Street* is not contrary to our argument. Compare 367 U.S. at 788-789, 796 (Mr. Justice Black dissenting).

ment for the advancement and protection of their economic well being. Indeed, the labor movement is the only on-going institution in our society, organized and controlled by working people, that fulfills that function. Unions were "organized out of the necessities of [their members'] situation" (*American Steel Foundries* v. *Tri-City Trades Council*, 257 U.S. 184, 209) and "it would be difficult, even with hostile eyes, to read the history of trade unionism except in terms of voluntary associations formed to meet pressing needs in a complex society" (*Local 60 Carpenters* v. *NLRB*, 365 U.S. 651, 656).

In meeting these "pressing needs", union have never limited their efforts to collective bargaining. From the first they have recognized that organized labor has no choice other than an active political role and that:

> "They are automatically in politics because they exist under a legal and political system which has been generally critical of union activities. The conspiracy suit and the injunction judge have been a problem for unions from earliest times. A minimum of political activity is essential in order that unions may be able to engage in collective bargaining on even terms." Reynolds, Labor Economics and Labor Relations, pp. 80-81.

For this reason:

> "American labor's initial role in shaping legislation dates back 130 years. With the coming of the AFL in 1886, labor on a national scale was committed not to act as a class party but to maintain a program of political action in furtherance of its industrial standards."
>
> * * * *
>
> "The expenditures revealed by the AFL-CIO Execu-

> tive Council Reports emphasize that labor's participation in urging legislation and candidacies is a major one . . . The passage of the Adamson Act in 1916, establishing the eight-hour day for the railroad industry, affords positive proof that labor may achieve its desired result through legislation after bargaining techniques fail." *Street*, 367 U.S. at 812-814 (Frankfurter J. dissenting, footnotes omitted). Compare *Mine Workers* v. *Pennington*, 381 U.S. 657, 669-672.[16]

And in the context of group litigation programs designed to assure effective implementation of the Federal Employers' Liability Act and state workmen's compensation laws, this Court has explicitly recognized that historically unions have been the "cooperative" medium through which workers "obtain meaningful access to the courts." *Transportation Union* v. *Michigan Bar*, 401 U.S. 576, 586; see also *Trainmen* v. *Virginia Bar*, 377 U.S. 1; *Mine Workers* v. *Illinois Bar*, 389 U.S. 217.

(d) The Eighth Circuit itself has held that "union membership is protected by the right of association under the First . . . Amendment. *Thomas* v. *Collins*, 323 U.S. 516." *AFSCME* v. *Woodward*, 406 F.2d 137, 139. Accord: *McLaughlin* v. *Tilendis*, 398 F.2d 287 (C.A. 7); *Orr* v. *Thorpe*, 427 F.2d 1129 (C.A. 5). The members' right to utilize their union to advance their position in the political arena is, as just demonstrated (pp. 15-17 *supra*), an integral and indispensable component of that membership right.

It is settled that "the Constitution protects the associa-

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[16] For a detailed historical survey of union political activity from its colonial beginning to the present, see the Brief for the AFL-CIO As Amicus Curiae in *Street*, No. 258, October Term, 1959, pp. 14-28.

tional rights of the members of [a] union . . . to consult with each other in a fraternal organization . . . for the lawful purpose of helping and advising one another in asserting" their rights in judicial proceedings. *Trainmen,* 377 U.S. at 5-6, 8. It follows ineluctably that the First Amendment also protects the members' right to utilize their fraternal organization as the means by which they participate in the election process. Plainly, the latter is no less "a form of political expression." *NAACP* v. *Button,* 371 U.S. 415, 429. And the "right of individuals to associate for the advancement of political beliefs . . . rank[s] among our most precious [First Amendment] freedoms." *Williams* v. *Rhodes,* 393 U.S. 23, 30. Support of a labor political committee, the purpose of which is to forward the candidacy of those who are sympathetic to the interest of union members, is an elemental exercise of that right.

If § 610 is construed to forbid union contributions and expenditures financed by their members' donations made for the direct support of political activity, that Section would constitute an absolute bar to the exercise of the members' First Amendment right to utilize the form of political association they prefer. Such a blanket prohibition can be justified, if at all, only by "a subordinating interest which is compelling" (*Bates* v. *Little Rock,* 361 U.S. 516, 524) which has been pursued by a means that neither "broadly stifle[s] fundamental personal liberties when the end can be more narrowly achieved" (*Shelton* v. *Tucker,* 364 U.S. 479, 488) nor places "substantially unequal burdens . . . on the right to associate . . . for the advancement of political goals" (*Williams* v. *Rhodes,* 393 U.S. at 31).

The objectives of § 610, as this Court's opinion in *CIO*

and *International Union UAW* indicate, were "to reduce undue institutional influence by unions on federal elections, to preserve the purity of such elections against the use of aggregated wealth, and to protect union members holding political views contrary to the unions." Br. in Op. p. 14. None of these provides the necessary justification for a prohibition on union political contributions and expenditures financed by voluntary money and not by dues.

Unions limited to financing such contributions and expenditures through donations "made directly to the support of a labor political organization" by workers "who know what the money is to be used for" and who have not been "forced to contribute" (93 Cong. Rec. 6440 (Sen. Taft)) stand in the same position as any other association. The full extent of any unique authority possessed by labor organizations is the power to require dues payments as a condition of employment (see § 8(a)(3) of Taft-Hartley) or of membership in an exclusive bargaining representative (see § 9(a)). This is the only basis upon which they can exact support from dissenting members and compile "aggregated wealth" with which to exert "an undue institutional interest" on elections. And there is no statute which prevents the National Association of Manufacturers, the American Medical Association, the American Farm Bureau, or any other traditional multi-purpose association, which is recognized as the spokesman for its members, from soliciting or receiving political donations from businessmen, doctors and farmers, etc. Thus none of the foregoing groups are limited to engaging in political activity through "separate and distinct" political organizations which must draw their funds from "spontaneous" rather than solicited donations

(Br. in Op. p. 12), and are forbidden from drawing upon the talents and influence of their established leaders (A. 1146-1147, n. 3).

The First Amendment puts it beyond Congress's power to prohibit organized workers from engaging in forms of associational political activity which is indistinguishable from that permitted all other segments of the society. For in politics as in wage negotiations, "a single employee is helpless in dealing" with his adversaries (*American Steel Foundries*, 257 U.S. at 209).[17] "And any unjustified discrimination in determining who may participate in political affairs . . . undermines the legitimacy of representative government." *Kramer* v. *Union Free School District*, 395 U.S. 621, 626. This is a necessary corollary of the long-settled principle that laws which discriminate between government approved and disapproved speech are inconsistent with the First Amendment. *Schacht* v. *United States*, 398 U.S. 58, 62-63; *Niemotko* v. *Maryland*, 340 U.S. 268, 272. Moreover, the rule against the imposition of "substantially unequal burdens" is particularly applicable where, as here, there is a "less drastic means" which would equalize those burdens of achieving Congress' basic purpose. Only a construction of § 610 which confines that Section to the prohibition of contributions and expenditures

[17] In the 1968 election 263 individuals with business occupations made contributions of over $10,000 each for a total of $6.7 million. Alexander, Financing the 1968 Election, App. G, pp. 325-329. This of course was just a fraction of the total of all business contributions. During that election "37 national level labor related political committees reported expenditures of $7.1 million." *Id.* at p. 194. Thus 263 businessmen balanced the efforts of some 16 million workingmen and women.

financed by union dues is consistent with these principles.[18]

[18] The Government cites two cases, *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, and *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, in support of its argument that § 610 as construed by the courts below is constitutional. Br. in Op. pp. 14-15. But those authorities cut against, rather than support, its position.

Red Lion stands for the proposition that it is permissible for the Government to increase the opportunity of individuals "to communicate with the public" (395 U.S. at 392) if they have suffered personal attacks, or if they are "the political opponents of those endorsed by" a broadcaster, and to reduce the advantages that accrue to licensees by virtue of their "preferred position" (*id.* at 400), because:

> "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee . . . '[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.'" *Id.* at 390.

Thus *Red Lion* does not justify a construction of § 610 which would stifle union access to the public forum, and which for that reason would be "inconsistent with the First Amendment goal of producing an informed public capable of conducting its own affairs." *Id.* at 392.

It is equally plain that Taft-Hartley's interdiction of "threats of reprisal" (see §§ 8(a)(1), 8(b)(1)(A) and 8(c)) as construed in *Gissel*, 395 U.S. at 616-620, does not justify the complete outlawry of all union solicitation of political donations decreed by the lower courts. On the contrary, as this Court specifically noted in *Gissel*, Congress added § 8(c), in 1947, to "implement the First Amendment," and by virtue of both § 8(c) and the First Amendment "an employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board." *Id.* at 617. Thus in enacting § 8(c) Congress was careful to preserve a wide area for the exercise of free speech. The legislative history demonstrates that the Congressional intent underlying § 610 was to preserve an equally wide area for the right of free association. Compare *CIO*, 335 U.S. at 120.

CONCLUSION

For the above-stated reasons, as well as those developed by the petitioners, the convictions should be reversed.

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August, 1971.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

MOTION FILED

DEC 22 1971

PIPEFITTERS LOCAL UNION No. 562, *et al.*,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AND BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, *et al.*,

Petitioners,

—against—

UNITED STATES OF AMERICA,

Respondent.

Motion for Leave to File a Brief of American Civil Liberties Union, as *Amicus Curiae*

It is hereby respectfully moved pursuant to Rule 42 of the Rules of this Court that the American Civil Liberties Union be granted leave to file the accompanying brief *amicus curiae* in support of the petitioners.

A letter of consent from the Respondent has been filed with the Clerk. Petitioners have declined to consent to the filing of a brief *amicus curiae.*

The American Civil Liberties Union is a nation-wide non-partisan organization with approximately 160,000 members in the United States. It is engaged solely in the defense of those principles embodied in the Bill of Rights. During its fifty-year existence, the ACLU has been particularly concerned with the values of the First Amend-

ment. It has adopted as formal policy the following statement:

> Expenditures by labor unions and corporations for political purposes, including the support of candidates and the expression of views on and support of legislative and social issues, are a proper exercise of the rights of free expression protected by the First Amendment. There should be no absolute prohibition against such expression, but reasonable limitations may properly be set by statute as to the total amount expended.
>
> The use of members' dues by labor unions for political purposes is thus permitted by the First Amendment. Although some union members may dissent from the choice expressed by the union majority in political campaigns, so long as those members are free to participate in the decision-making process within the union they are not deprived of their civil liberties. In addition, dissenting union members are free to express their contrary opinion outside the union in public debate. However, special union assessments for political purposes, separate from union dues receipts, should be made by vote of the union's membership, with the rights of any member opposing to be free of the assessment.

This case raises an important question concerning the right of labor unions and of union members to contribute financially to candidates in federal elections. It also involves the rights of free speech and association of union

members. It also involves a question of the application of the Due Process Clause to vaguely drawn statutes.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION No. 562, *et al.*,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The interest of the *amicus curiae* is set forth in the proceeding motion.

Statement

The petitioner-union and the individual petitioners were convicted on September 19, 1968, by a jury in the United States District Court for the Eastern District of Missouri, of conspiring to violate 18 U.S.C. §610, which proscribes, *inter alia*, any contribution by a labor organization "in connection with any election at which Presidential and Vice Presidential electors of a Senator or Representative * * * are to be voted for * * *." Local 562 was fined $5,000, and union officers John L. Lawler and George

Seaton were each sentenced to one year's imprisonment and fined $1,000. A panel of the Court of Appeals for the Eighth Circuit affirmed, one judge dissenting. The case was reheard *en banc*, and the court again affirmed petitioners' convictions.

The action for which petitioners were convicted consisted essentially of establishing a separate fund to which members of the union, as well as non-members working under the jurisdiction of the union, contributed. Part of the fund was used to support candidates in federal elections.

ARGUMENT

I. Section 610 Does Not Apply To The Facts Of This Case.

This case involves the constitutionality of a provision of the Federal Corrupt Practices Act, 18 U.S.C. §610. Twice before the statute and its predecessor have been before the Court; on both occasions, however, the Court avoided passing upon its constitutionality. *United States* v. *U.A.W.*, 352 U.S. 567 (1957); *United States* v. *C.I.O.*, 335 U.S. 106 (1948). The constitutional issues can be avoided in this case too. The judgment below could be reversed on the ground that the statute was improperly construed to cover the activities of the defendants. See *Brief for Petitioners*, pp. 51-77; *Brief of the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae*. Indeed, the present *amicus curiae* agrees with the petitioners and the AFL-CIO that, on the record in this case, these convictions cannot be sustained under Section 610. Further, the trial judge's charge improperly construed the statute so that the jury

could bring back guilty verdicts even if they found that contributions to the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund [hereinafter the Fund] were strictly voluntary.

The theory of the government, and of the courts below, is that Section 610 "prohibit[s] labor unions from using regular union funds to make direct monetary contributions for political purposes to candidates in federal elections." *Brief of Respondent*, p. 24. Under this theory, of course, the crucial questions are whether the Fund is the alter ego of Local 562, and whether the Fund's money is in reality the Union's money. Hence, whether contributions to the Fund are in fact voluntary is not dispositive.

We agree with the petitioners that the record in this case demonstrates both that the Fund is not the alter ego of the Union and that the funds in question were not the funds of the Union. *Brief of Petitioners*, pp. 51-69. In addition, we do not agree with the government that by enacting Section 610 Congress prohibited "all contributions and expenditures made in the name of a union, without regard to the source of funds utilized . . ." *Brief for the AFL-CIO as Amicus Curiae*, p. 7. See generally, *ibid.*; see *United States* v. *C.I.O.*, *supra*; cf. *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961). The statute does not presume to bar all contributions or expenditures made in the name of the union. See *United States* v. *C.I.O.*, *supra*. Further, the legislative history of the Act reveals that union funds whose source is voluntary contributions are excluded from the Act. See 93 Cong. Rec. 6440 (Sen. Robert Taft).

II. Section 610 Violates The First Amendment And Is Overbroad.

Especially as construed and applied by the courts below, Section 610 violates the rights of free speech, press, petition and association guaranteed by the First Amendment. In the opinion of five different Justices of the Supreme Court, Section 610 is unconstitutional on these grounds. In *United States* v. *C.I.O.*, 335 U.S. 106 (1948), Justices Rutledge, Black, Douglas and Murphy took that position. In *United States* v. *U.A.W.*, 352 U.S. 567 (1957), Chief Justice Warren joined Justices Black and Douglas in reaffirming their earlier position. In addition, four members of the Supreme Court who participated in the majority opinion of the Court in 1948 indicated that unless the Section could be construed to avoid a conviction in those cases, their only alternative would be to hold it unconstitutional. *United States* v. *C.I.O., supra,* 335 U.S. at 121; and in *United States* v. *Rumely,* 345 U.S. 41, 47 (1952), the Court stated that it "strained words" to avoid the constitutional issue presented in the C.I.O. case.

Other than the decision of the courts below, the only decision clearly sustaining the constitutionality of Section 610 in its present form is *United States* v. *Painters Local Union No. 481,* 79 F. Supp. 516 (D. Conn. 1948). This decision was set aside on appeal on the ground that the political expenditures involved were not covered by law, and the court of appeals declined to pass on the constitutional issue. 172 F.2d 854, 856 (2d Cir. 1949), citing *United States* v. *C.I.O. supra.*

We submit that it is time for the Court to pass on the constitutionality of this statute, and that it should be declared void.

In *United States* v. *C.I.O.*, the government conceded that Section 610 is an abridgement of "rights guaranteed by the First Amendment." 335 U.S. at 127-8, quoting the district court opinion, 77 F. Supp. 355 at 356, 357, 359 (D.D.C. 1948). The government is quite correct; Section 610 is a flat prohibition. It unqualifiedly makes unlawful all union expenditures in federal elections. It does not purport merely to regulate. It is not a mere limitation on the level of expenditures. Nor is it directed only to an identifiable, given specific evil controllable by Congress. Rather, *all* union expenditures in federal elections are absolutely barred if they are used to bring the union's election position before the general public. Compare *United States* v. *C.I.O.*, 335 U.S. 106 (1948). Section 610 applies even where the union allows dissenting members to withhold contributions from the fund which supports the expression of union views. Cf. *Brief for Petitioners* at pp. 36-37; but see *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961).

Most political expenditures relate directly or indirectly to speech, publication or some form of communication addressed to those whose votes are sought. The distinction between prohibiting speech and prohibiting expenditure for speech is non-existent. It is for this reason that any law that prohibits the right to engage in these types of political activities immediately raises a question as to whether it abridges the rights of free speech, press and association under the Constitution.

Especially as it is applied in this case, Section 610 goes much too far. Union members have voluntarily pooled their financial resources in political association in an or-

ganization which is separate from the Union. But this right of political association is central to the First Amendment. See *Brief for Petitioners* at pp. 82-83; *N.A.A.C.P.* v. *Button*, 371 U.S. 415 (1963); *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449 (1958).

A labor union operates in many ways—through collective bargaining, public education, litigation, legislation and public elections. In order to serve its members and their interests adequately, it needs to do all of these things. Support for particular legislation by testimony before legislative bodies, aid to sympathetic candidates and elected politicians, pressuring state and federal government bodies are all necessary if a union is to function effectively. The legislative and political functions cannot be divorced from the bargaining functions. That is precisely what Section 610 attempts to do. Cf. *United States* v. *Construction and General Laborers Union No. 264*, 101 F. Supp. 869 at 875.

Congress may not require unions to divorce themselves from political and legislative functions. They are at the heart of the First Amendment freedom of association; they are constitutionally protected. See e.g., *Thomas* v. *Collins*, 323 U.S. 516 (1945); *Hague* v. *C.I.O.*, 307 U.S. 496 (1939); *AFSCME* v. *Woodward*, 406 F.2d 137 (8th Cir. 1969); *Orr* v. *Thorpe*, 427 F.2d 1129 (5th Cir. 1970); *McLaughlin* v. *Tilendis*, 398 F.2d 287 (7th Cir. 1968); *National Association of Letter Carriers* v. *Blount*, 304 F. Supp. 546 (D.D.C. 1969) (Three judge), *appeal dismissed*, 400 U.S. 801 (1970). This Court has explicitly recognized the First Amendment protection of labor union activities to secure judicial enforcement of union members' rights even when these rights are not directly related to a union's function as a collective bargaining agent. *United Trans-*

portation Union v. *Michigan Bar*, 401 U.S. 576 (1971); *United Mine Workers* v. *Illinois Bar*, 389 U.S. 217 (1967); *Brotherhood of Railroad Trainmen* v. *Virginia Bar*, 377 U.S. 1 (1964). Surely a labor union's right to petition legislators receives the highest protection of the First Amendment. Cf. *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-38 (1961), where the Court refused to apply the Sherman Act against an Association of railroads seeking to advance their own commercial interests by high powered propaganda efforts designed to persuade Congress to enact legislation restraining the trade of competitive truck companies. See *International Association of Machinists* v. *Street*, *supra*, 367 U.S. at 812-14 (1961) (Frankfurter, J. dissenting). Further, in the *Street* case, the Court in effect legitimated labor union expenditures in support of candidates for public office. See *Street*, *supra*; *id.* 367 U.S. at 788-89, 796 (Black, J. dissenting).

Because Section 610 invades the protected province of free press, speech, petition, and association, it suffers fatal defects under the overbreadth doctrine, which has two components. A law is overbroad when it proscribes acts "which legitimately may be proscribed" as well as acts "which may not be proscribed." *Keyishian* v. *Board of Regents of New York*, 385 U.S. 589, 609 (1967); see also, e.g., *United States* v. *Robel*, 389 U.S. 258, 267-68 (1967); *Schneider* v. *Smith*, 390 U.S. 17, 24 (1968); *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966): A law is also overbroad, in violation of the First Amendment, if some means less restrictive of the essential democratic interest in free communication and association is available for government to pursue its other subordinating or paramount interests. See, e.g., *United States* v.

Robel, supra; Shelton v. *Tucker*, 364 U.S. 479, 488; *Schneider* v. *Smith, supra; United States* v. *O'Brien*, 391 U.S. 367, 376-77.

Section 610 suffers from both defects of overbreadth. It is unconstitutional under the first aspect of the doctrine to the extent that it penalizes clearly protected activities. See, e.g., *United States* v. *C.I.O., supra* (semble); cf. *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969). Section 610 is unconstitutional under the second aspect of the overbreadth doctrine as well. The government cannot sustain its burden of demonstrating that no less restrictive means are available to accomplish its subordinating purpose.

In *United States* v. *C.I.O.*, the government contended, as to Section 610, that "Congress has power under Article I, Section 4, of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections." 332 U.S. at 127-8, citing the district court opinion, 77 F. Supp. 355 at 356, 357, 359 (D.D.C. 1948). The government makes the same claim again in this case. *Brief for Respondent* at pp. 35-36. The government also contends that Congress may act to protect the rights of individual union members. *Brief for Respondent* at pp. 36-39.

It is by no means clear, however, that union contributions to candidates for federal office have any deleterious effect on "the purity and freedom of elections." Any conceivable bad effect is likely to be diminimus; for Union contributions have never amounted to much more than 5 per cent of the *total* contributions to both parties. This is not a proportion large enough to exercise a decisive influence in any direction. Bok and Dunlop, Labor and the American Com-

MUNITY at 414 (1970), citing HEARD, THE COSTS OF DEMOCRACY at 20 ff. (1962).

Considering Section 610's massive invasion of First Amendment rights, the government's interest just is not compelling. Further, the less restrictive alternative of comprehensive election reform, including the setting of maximum limits on expenditures, is clearly available to secure its legitimate interest.*

The government's claim that Section 610 protects the interests of dissenting union members is also unavailing. On the record in this case, the government has not demonstrated that the dissenting union member is compelled to contribute to the political Fund. See, e.g., *Brief for Petitioners* at pp. 29-36. This Court has ruled that the dissenting union member's interest is adequately protected if he can contract out the portion of his dues that would be expended in support of political positions with which he disagrees. *International Association of Machinists* v. *Street, supra.* In addition, the dissenting union member is fully protected in his right to express his contrary opinion inside the union and outside of it in public debate. See The Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §411; *Hurwitz* v. *Directors Guild of America, Inc.*, 362 F.2d 67 (2d Cir. 1966), *cert. denied*, 385 U.S. 971 (1966); cf. *International Association of Machinists* v. *Street, supra.*

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* See 382 Federal Election Campaign Act of 1971; 92d Cong., 1st Sess.; Conference Committee Report of §382, No. 92-58 (December 14, 1971).

III. Section 610 Is Unconstitutionally Vague.

Section 610, Title 18, U.S.C., on its face, and as construed and applied by the courts below, is so vague and uncertain as to violate the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

No principle of federal constitutional law, or of due process of law, is better established than the so-called vagueness doctrine. See generally, Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67 (1960). Early and often this Court has declared that:

> A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess of its meaning and differ as to its application, violates the first essential of due process of law. *Connally* v. *General Constructions Co.*, 269 U.S. 385, 391 (1926).

Penal laws especially must meet a heavy requirement of clarity. *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939). Further, where a law may "abut upon sensitive areas of basic First Amendment freedoms," *Baggett* v. *Bullitt*, 377 U.S. 360, 372 (1964), the requirement of clarity is heaviest of all. If the rule were otherwise, we would have cause to fear that "the free disseminatoin of ideas may be the loser," *Smith* v. *California*, 361 U.S. 147, 151 (1959); for uncertainty would cause people to "steer far wider of the unlawful zone, *Speiser* v. *Randall*, 357 U.S. 513, 526 (1958) . . . , than if the boundaries of the forbidden are were clearly marked." *Baggett* v. *Bullitt*, *supra* at 372.

The doctrine of vagueness has several interrelated components or functions each of which expresses the constitu-

tional need for clarity at the various points along the criminal process. See generally, Note, *supra*, 109 U. Pa. L. Rev. 67 (1960); Amsterdam, *Federal Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers, and the Like*, 3 Crim. L. Bull. 205 (1967); Note, *Bringing the Vagueness Doctrine on Campus*, 80 Yale L.J. 1261 (1971).

First, a statute must be sufficiently clear that reasonable men seeking to conform their conduct to the requirements of law will be able to understand and agree as to what is prohibited and what is permitted. In this sense, vagueness effects a deprivation of notice. See, e.g., *United States* v. *Robel*, 389 U.S. 258, 281 (1967) (Brennan, J., concurring). That was the point of the *Connally* and *Lanzetta* decisions. The requirement of notice exists not merely to enable men to conform their conduct to law, but also to enable men charged with violations of law to prepare their defenses properly.

At this point the notice function of the vagueness doctrine merges into a second function. The crux of the problem becomes improper delegation. The Court has recognized that an over-vague criminal statute will tend to "license the jury to create its own standards in each case." *Herndon* v. *Lowry*, 301 U.S. 242, 263 (1937). Accord *United States* v. *L. Cohen Grocery Co.*, 255 U.S. 81, 89 (1921); *Giacco* v. *Pennsylvania*, 382 U.S. 399, 402-03 (1966). In a sense, this dimension of vagueness stands as a chide to the legislature, because of its "failure to have made a 'legislative judgment' . . . ." *United States* v. *Robel*, *supra*, 389 U.S. at 275 (Brennan J., concurring). But it is much more than this. It is also responsive to the likelihood that, unless the legislature provides reasonably clear standards of illegality, judges and juries may have a tendency to enforce

laws not even-handedly but selectively and discriminatorily against only the unpopular and the downtrodden.

This due process need to constrain discretion extends not only to the actions of judge and jury, but also to the actions of the prosecutor. This is the third function of vagueness. The prosecutor too must be restrained because an overvague criminal law is "susceptible of sweeping and improper application." *NAACP* v. *Button,* 371 U.S. 415, 433 (1963). Even if judges and juries refuse to convict under a vague law, it still "lends itself to selective enforcement against unpopular causes," *NAACP* v. *Button, supra,* 371 U.S. at 435; more specifically, it furnishes a convenient tool for "harsh and discriminatory enforcement by prosecuting officials against particular groups deemed to merit their displeasure," *Thornhill* v. *Alabama,* 310 U.S. 88, 97-98 (1940). Convictions are not necessary to deter and suppress; usually mere prosecution or threat of prosecution will be sufficient. See *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965).

The fourth function of the vagueness doctrine springs from many of the same considerations as do the second and third functions. The vagueness doctrine bars government from overreaching constitutionally protected freedoms. That is why the vagueness doctrine is applied with greater strictness when a law abuts sensitive First Amendment rights. "Standards of permissible statutory vagueness are strict in the area of free expression. . . Because the First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity (when such freedoms may be affected by the regulation)." *NAACP* v. *Button,* 371 U.S. 415, 432-433 (1963); see *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965), and au-

thorities cited. In a sense, this aspect of the vagueness doctrine is the equivalent of "over-breadth." Note, *supra*, 109 U. PA. L. REV. at 76, 80-81.

Especially as "illuminated" by the record in this case, and by its spotty history of enforcement, Section 610 fits well within the due process prohibition against vague statutes—all four aspects of that prohibition. In other words, on its face and as applied to the petitioners: (1) This statute provides inadequate notice to the petitioners. They do not know what conduct is necessary to conform to the requirement of law; and they are unable adequately to prepare their defense. (2) This statute lodges much too much discretion in the judge and jury. It leaves them free to decide, unconstrained by legally fixed standards, what is prohibited and what is not in each case. (3) This statute also leaves the prosecutor so unrestrained that he may enforce the law discriminatorily and selectively against only persons and groups with whom he is displeased. (4) This statute dangerously abuts and impinges upon federally protected freedoms and activities.

On its face, Section 610 is unconstitutionally vague in several particulars. Most notably, there is no definition of the word "expenditure." By "strain[ing] words" (*United States* v. *Rumely*, 345 U.S. 41, 47 (1952)), the courts have held that in three cases the political expenditure there involved was not prohibited by the Section despite the apparent flat prohibition therein. *United States* v. *C.I.O.*, 335 U.S. 106 (1948); *United States* v. *Painters Local Union No. 481*, 172 F.2d 854 (2d Cir. 1949); *United States* v. *Construction and General Laborers Union No. 264*, 101 F. Supp. 869 (W.D. Mo. 1951). However, none of these

decisions instructs us precisely as to the meaning of the term.

Countless questions arise. Compare *United States* v. *U.A.W.*, 352 U.S. 567, 592 (1957). May a union mail a mimeographed statement on political candidates to every member of the union? May a union use a radio program to express its views on candidates? Would it be different if almost all the listeners were members of the union? A majority? Half? Less than half? May a union pay President George Meany's plane fare to Missouri to make a political speech there? May it do the same for a potential or actual candidate in an election? These and many other questions remain unanswered.

Similarly the phrase "in connection with any federal election" has no commonly accepted meaning either in the statute, any legislative history, or the dictionary. The relation in time to an election, primary or convention, within which particular speech or action may be held "in connection with" the event is wholly uncertain. Would a union expenditure in 1971 directed toward a long range educational program designed to shape the outcome of the 1972 elections be proscribed? Would the preparation and distribution by the union of Congressional voting records demonstrating that certain legislators had more often voted for the union movement than certain others constitute an expenditure "in connection with" an election?

The vagueness and indefiniteness of the term "in connection with any federal election" finds an exaggerated counterpart in the term "expenditure." Together, when read literally, the two terms would interdict virtually every form of conduct which could be characterized as "in connection with" a federal election.

It is impossible to determine where the legislature intended for the prohibition to stop. Congress itself gave little indication of the evils at which it was aiming during the enactment in 1947 of what is now Section 610. (No clearer signals were provided when the predecessor provision was enacted in 1943.) The lack of discussion in the hearings and reports prior to the passage of the Labor-Management Relations Act results in there being little evidence as to the particular dangers which Congress may have felt made this outright prohibition necessary. See *United States* v. *C.I.O.*, 335 U.S. 106, 132, 134, 150, 151, 153 (1948) (Rutledge, Black, Douglas and Murphy, JJ. concurring). Hence, if taken literally, on its face Section 610 encroaches too much on First Amendment rights; if not taken literally, it is too vague.

Not only is Section 610 unconstitutional on its face, but it is inherently vague when applied to the facts of this case. Three judges dissented in the Court of Appeals over its application here, and the decision itself conflicts with two federal district court decisions decided prior to this case. *United States* v. *Teamsters Local 688*, 41 L.C. 23,380 (E.D. Mo. 1960); *United States* v. *Anchorage Cent. Labor Council*, 193 F. Supp. 504 (D. Alaska 1961). Petitioners took skilled legal advice as to the correct way in establishing the Fund. There was nothing more that petitioners could do without relinquishing their First Amendment rights. See generally *Brief for Petitioners* at pp. 84-94.

CONCLUSION

For the reason set forth in this brief, the Court should reverse the judgments of the courts below.

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December 16, 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, ET AL., *Petitioners*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITIONERS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM AFTER ARGUMENT

Pursuant to the provision of Rule 41(5) & (6) of the Rules of this Court, Petitioners hereby move for leave to file a supplemental memorandum after argument to bring to the Court's attention § 205 of Public Law 92-225 (the Federal Election Campaign Act of 1971),

which was passed by Congress on January 19, 1972, and was signed into law by the President February 7, 1972. In support of this motion Petitioners show as follows:

1. The prosecution which is the subject matter of the instant case was brought under 18 U.S.C. § 610.

2. Section 205 of Public Law 92-225 amends § 610. Representative Orville Hansen, the sponsor of this amendment, stated that its "purpose and effect . . . is to codify and clarify the existing law . . . [and to write] currently accepted practices into clear and explicit statutory language." App. pp. 16a, 21a.[1]

3. Thus § 205 of Public Law 92-225 is "a later statute *in pari materia*" which "throws a cross light upon" the earlier enactment before the Court (L. Hand, J., in *U.S.* v. *Aluminum Corp. of America,* 148 F.2nd 416, 429 (C.A. 2) followed in *Michigan National Bank* v. *Michigan,* 365 U.S. 467, 481), and which is, for that reason, worthy of the Court's consideration. Compare *NLRB* v. *Local 639, Teamsters (Curtis Bros.)*, 362 U.S. 274, 291-292; *NLRB* v. *Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 194.

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[1] For the convenience of the Court, the Appendix to the accompanying Memorandum contains: the text of § 205 of Public Law 92-225 (App. p. 1a); Representative Hansen's preliminary explanation of his amendment to 18 U.S.C. § 610 (App. p. 2a); Representative Hansen's floor explanation of his amendment delivered at the time it was debated and voted upon in the House (App. p. 4a); the relevant portion of the Conference Committee Report (App. p. 14a); and Representative Hansen's additional explanation of his amendment delivered during the floor debate on the Conference Committee Report (App. p. 15a).

CONCLUSION

For the above stated reasons the Petitioners' motion for leave to file a supplemental memorandum after argument should be granted.

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IN THE

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UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

PETITIONERS' SUPPLEMENTAL MEMORANDUM

Although the Government has shifted its position many times throughout the course of this prosecution, its basic theory before this Court now appears to proceed from the premise that in enacting 18 U.S.C. § 610 Congress intended to prohibit unions from utilizing

dues moneys for making federal political contributions and expenditures, and acknowledges that an essential element of the Government's case was that payments to the Pipefitters Voluntary etc. Fund "were assessed by the union as part of its dues structure". Brief for the United States, p. 23. But the jury instructions directed the jury to return a verdict of guilty if it concluded that the Fund was not "separate and distinct from the union", and even if it concluded that "the payments into the fund [had] been made voluntarily by some or even all of the contributors". A. 1113; 1093. Thus, the instructions embodied the view that § 610 absolutely prohibits federal political contributions by unions, and that proof justifying the jury to conclude that the Fund, which admittedly made contributions, and the Union, were a single entity (by, in effect, "piercing the corporate veil"), was sufficient to sustain a conviction.[1]

This was plain error. In enacting § 610, Congress did not intend to prohibit all union political contributions; its aim was simply to prohibit contributions

[1] Because the instructions embodied this view, the District Court refused an instruction (AA) requested by the Petitioners which correctly stated the law:

> "The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for political office. The law merely prohibits union dues or assessments from being used for such purposes. Therefore, if you find that contributions made to the political, educational, legislative, charitable or defense fund were made by members of Local 562 voluntarily and did not constitute the payment of union dues or assessments, you must find the defendants not guilty." A. 1097-1098.

See also the other requested instructions set out in Pet. Br. pp. 72-73, n. 21.

financed by union dues. As Senator Taft advised the Senate, under § 610

> "'unions can . . . organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for [the] purpose [of making federal political expenditures and contributions].'" 93 Cong. Rec. 6440.

Congress' intent in this regard has now been reaffirmed. Section 205 of Public Law 92-225 adds the following to the original language of § 610:

> "As used in this section, the phrase 'contribution or expenditure' . . . shall not include . . . the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: PROVIDED, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisals; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction." App. p. 1a.

As shown by the legislative history of § 205 of Public Law 92-225, Congress added the foregoing statutory language, not to change the law, but "to codify and clarify the existing law . . . [and to write] currently accepted practices into clear and explicit statutory language." App. pp. 16a, 20a.

Given the clarity with which Congress has manifested its will, the point of § 610, and of this Memorandum,

can be summarized by answering a question asked by the Court in the oral argument. As we recall, Mr. Justice Stewart inquired whether § 610 would be violated if he (or presumably any other individual who has not been coerced) gave a union $50,000 to be used by the union to make federal political contributions and the union accepted the money and made the contributions. Government counsel equivocated, but as the Government's brief stated "We do not question 'that a union could establish a political organization for the purpose of receiving ear-marked political monies directly from [voluntary contributions of] union members'." Brief for the United States, p. 30. Thus, both at the time it was posed and today, § 610 required the conclusion that there could be no violation in the hypothetical situation envisaged by Mr. Justice Stewart.

Since the jury instructions misstated the essential elements of a § 610 offense by advising the jury that a union could *not* accept and utilize such donations without violating the law, it follows that the convictions must be reversed. *Screws* v. *United States,* 325 U.S. 91, 107.[2]

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[2] In light of the limited scope of § 610, it cannot be argued, as the Government has, that Congress wished to prohibit even noncoercive union solicitation of political donations. The language of § 205 of Public Law 92-225 demonstrates that Congress does not share the Justice Department's view that "the union-worker relationship is peculiarly susceptible of undue influence." Brief for the United States, p. 38. See also App. p. 13a.

CONCLUSION

For the foregoing reasons as well as those stated in Petitioner's opening brief, and in the AFL-CIO's brief *amicus,* the convictions should be reversed.

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APPENDIX

APPENDIX

1. The Text of § 205 of Public Law 92-225

* * * * * * * * * * *

SEC. 205. Section 610 of title 18, United States Code, relating to contributions or expenditures by national banks, corporations, or labor organizations, is amended by adding at the end thereof the following paragraph:

"As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: Provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction."

2. Representative Hansen's Preliminary Explanation of His Amendment to 18 U.S.C. § 610

HANSEN AMENDMENT TO ELECTORAL REFORM BILL

(Mr. HANSEN of Idaho asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. HANSEN of Idaho. Mr. Speaker, at the proper time during tomorrow's consideration of the various Federal election reform proposals, I intend to offer the following amendment. It deals with the use of union treasury funds during political campaigns, an area of abuse that is neglected by the otherwise excellent bill approved by the Senate last August and introduced in the House by Congressmen FRENZEL and BROWN.

Mr. Speaker, the language of the current statutory provision governing the use of corporation and union moneys in behalf of campaigns for elective office is quite vague and has prompted a number of Supreme Court rulings designed to specify its concrete application. These opinions provide that unions may use treasury money to inform their members about the views and positions of candidates, and to support voter registration drives and get-out-the-vote activities aimed at union members and their families. By contrast, the Court's rulings explicitly prohibit the use of union treasury funds for these purposes if they are directed at the general public.

Mr. Speaker, the purpose of my amendment is to clarify and codify these rulings in statutory form. We all know that the privilege granted by the court to unions to use treasury funds for activities directed at their members and families has been abused and must be stopped if our election financing process is to be cleaned up and if it is to retain the confidence of the American public. My amendment, I believe, will accomplish this end in a way that is

fair to all parties concerned. I include it at this point in the RECORD:

Amendment Offered by Mr. Hansen of Idaho to the Amendment in the Form of a Substitute Introduced by Mr. Frenzel and Brown of Ohio (H.R. 11280)

Page 18, line 20, renumber Section 205 as Section 206 and insert in lieu thereof a new Section 205 to read as follows:

Section 610 of Title 18, United States Code, relating to contributions or expenditures by national banks, corporations, or labor organizations, is amended by adding at the end thereof the following new paragraph:

"As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit or gift of money or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization; provided, that it shall be unlawful for such a fund to make a 'contribution or expenditure' by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees or other monies required as a condition of membership in a

labor organization or as a condition of employment, or by monies obtained in any commercial transaction."

(117 Cong. Rec. H. 11232 (Daily Ed., Nov. 17, 1971))

3. Representative Hansen's Explanation of His Amendment To 18 U.S.C. § 610 Delivered at the Time It Was Debated and Voted Upon in the House of Representatives

Mr. HANSEN of Idaho. Mr, Chairman, the purpose of my amendment is to codify the court decisions interpreting section 610 of title 18 of the United States Code, and to spell out in more detail what a labor union or corporation can or cannot do in connection with a Federal election.

The text of the amendment may be found in the CONGRESSIONAL RECORD for Wednesday, November 17, 1971, at page H11232.

Section 610 of title 18, United States Code, prohibits the making of a contribution or expenditure in connection with certain elections by a corporation or a labor union. The first part of my amendment reinforces that prohibition and defines the phrase "contribution or expenditure" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section."

The effect of this language is to carry out the basic intent of section 610, which is to prohibit the use of union or corporate funds for active electioneering directed at the general public on behalf of a candidate in a Federal election. This part of my amendment is identical to the first part of section 8 of H.R. 11060.

Next, the amendment, in further defining the phrase "contribution or expenditure," draws a distinction between activities directed at the general public, which are prohibited, and communications by a corporation to its stock-

holders and their families, and by a labor organization to its members and their families, on any subject, which the courts have held is permitted.

The amendment sets forth the limited circumstances where such communications are permitted in connection with an election. These include:

(1) non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families.

(2) the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.

This fund must be separate from any union or corporate funds, and contributions must be volutary. To insure that contributions are voluntary, the amendment prohibits the use by the separate political fund of any money or anything of value obtained by the use or threat of force, job discrimination, or financial reprisal, or by dues or fees, or other monies required as a condition of employment or membership in a labor organization, or by moneys obtained in any commercial transaction.

The net effect of the amendment, therefore, is to tighten and clarify the provisions of section 610 of title 18, United States Code, and to codify the case law. It spells out more clearly the rules governing election activities that apply equally to labor unions and corporations. While prohibiting abuses that involve activities directed at the general public, the amendment recognizes that the constitutional guarantee of free speech protects the right of labor organizations and corporations to communicate with their own members or stockholders.

Section 610 of title 18 of the United States Code makes it a criminal offense for a corporation or labor union to make a contribution or expenditure in connection with any

Federal election. The legislative history of section 610 demonstrates that it was not Congress' intent in passing this provision to completely exclude these organizations from the political arena. That history, as the Justice Department, which has the responsibility for enforcing the statute, has stated, shows instead that the purpose of section 610 is simply to insure that—

> When a union [or corporation] undertakes active electioneering on behalf of particular federal candidates and designed to reach the public at large, [the organization's] general funds . . . may not be used" (Brief for the United States in U.S. v. UAW, 352 U.S. 567).

Corporate and labor political communications directed at members and stockholders, nonpartisan registration and get out the vote activities, and partisan electioneering directed at the general public financed by voluntary contributions, are all lawful.

While these rules are well known to students of this area of the law the exact scope of section 610 is a matter of some mystery to the uninitiated. This stems from the fact that the cryptic statutory language is of little help and a full understanding of the provision's meaning requires a diligent study of the court cases and the legislative history. The result has been an undesirable confusion as to what section 610 actually provides. And this has led to numerous charges that the law is defective, or that it is not being observed. Many of these charges stem from a lack of appreciation of what section 610 actually provides. Others indicate that there may well be instances in which corporations and unions seek to utilize the complex interrelationship between the statutory language and the gloss which had been put on that language as a cover to obscure the fact that they are acting unlawfully. In either event the public confidence in the regulation of Federal election financing suffers.

Despite this lingering confusion it has been 24 years since Congress last legislated in this field. Section 8 of H.R. 11060, the so-called Crane amendment to the Hays' bill, attempts to break this legislative logjam by adding a new final paragraph to section 610 defining the critical phrase "contribution and expenditure" as used therein.

Unfortunately, as often happens in dealing with a complex subject, the Crane amendment's definition tends to make the problem worse rather than solving it. For section 8 of H.R. 11060 can either be read as prohibiting all union or corporate activity financed by treasury money that touches Federal elections in any way, or as continuing the limited permissions the 1947 Congress extended to corporations and unions with one exception—"get out the vote activities" which are presently permissible but which would be prohibited. In the name of providing legislative clarification it creates new confusion. The result is certain to be fresh uncertainty and a new round of litigation.

While its execution is faulty the idea behind section 8 of H.R. 11060 is sound. Congress should set out in a clear statutory form precisely what corporations and unions can and cannot do in the election area. And it is plainly proper to do so during the consideration of this overall attempt to modernize campaign regulation. But since section 8 does not in fact accomplish that goal I hereby offer my amendment, the aim of which is to perfect section 8, and by so doing to clarify the exact scope of section 610.

Section 610 strikes a balance between organizational rights and the rights of those who wish to retain their shareholding interest or membership status but who disagree with the majority's political views. The balance presently obtaining provides, in my judgment, an optimum solution to the complex problem of accommodating these conflicting interests. This solution is sound in theory as I shall show, has proved workable in practice, and has gen-

erated a broad bipartisan consensus in favor of continuation of the present rules. For this reason my amendment, with one exception, follows the present law.

Analytically the proposal I offer has three component parts. Before turning to them, two preliminary points should be noted for the sake of completeness. At present section 610 does not, and under either this amendment or section 8 of H.R. 11060 it would not, cover corporate or union legislative activities. Lobbying is a separate field which has traditionally been, and should continue to be, regulated separately. Indeed, while section 610 discourages corporate political action, the Internal Revenue Code, through the deductions allowed, encourages lobbying. In addition, at present section 610 does not, and under either this amendment or section 8 of H.R. 11060 would not, regulate corporate or union political activity in connection with State elections even though such activity, by reason of such factors as the party system and the simultaneous running of Federal and State elections, may have some residual overlapping effect. For the power of the States to regulate their own elections is essential to a healthy Federal system.

With these preliminaries to the side the first section of my amendment spells out in detail the point that corporations and unions may not use their treasury money—that is, the money a corporation secures from commercial transactions or a union secures from dues, initiation fees and similar exactions—either directly or indirectly to make any type of "contribution or expenditure in connection with any federal election." This prohibitory language follows that of section 8 of H.R. 11060 word for word and it is plainly all-encompassing. That is as it should be. For as I noted at the outset the basic purpose of section 610 is to prohibit active electioneering by corporations and unions for Federal candidates directed at the public at large. There can be no doubt that this language accomplishes that end.

Before going further, and to insure that the accepted not be confused with the necessary, it should be noted that this prohibition is the most far-reaching in the entire election law. While the regulation of corporate and union political contributions is based on a fear of the effects of aggregated wealth on politics these organizations are not the sole repositories of funds adequate to finance big money contributions. Yet Congress has never regulated the activities of legal, medical, or farm organizations, for example, nor has it placed comparable stringent limitations on wealthy individuals. Indeed, if any of the proposals presently under consideration by this body become law, only corporations, unions and political candidates will be limited in the making of political contributions and expenditures.

Thus, section 610 as it stands, and under my proposal, represents a complete victory for those who believe that corporations and unions have no moral right to utilize their organizations' general funds for active public partisan politicking. It totally subordinates organizational interests to individual interests.

Recognizing that group interests must be given some play and that the interest of the minority is weakest when corporations and unions confine their activities to their own stockholders and members, the beneficial owners of these organizations, the second subdivision of the amendment sets out three precisely defined and limited permissions for corporate and union activity related to the political process.

The courts, as well as other independent students of section 610 and its legislative history, have concluded that the 1947 Congress did not intend to prohibit corporations or unions from communicating freely with their members and stockholders—see *U.S.* v. *CIO,* 335 U.S. 106—from conducting nonpartisan registration and get out the vote campaigns, or from securing voluntary contributions made directly to the support of a labor—or management—political

organization—93 CONGRESSIONAL RECORD 6440, remarks of Senator Taft.

Today, as 24 years ago, there is a broad consensus that these limited permissions are proper. For example, Senator DOMINICK speaking on the floor of the other body on behalf of an amendment to section 610 he had proposed, stated:

> If a member wishes to pay money voluntarily to a candidate or to a labor organization fund for a candidate or even to a fund which the union will determine how it is to be spend, I have no objections . . . A labor organization should be able to expend its funds on behalf of . . . nonpartisan political activity such as voter registration or voter education on campaign issues . . . (and) endorsing a particular candidate in its normal union publications. This, I believe, is a legitimate exercise of free speech, 117 Cong. Rec. S. 13153 (Aug. 4, 1971).

The compelling policy considerations supporting this consensus can be very succinctly stated.

First, every organization should be allowed to take the steps necessary for its growth and survival. There is, of course, no need to belabor the point that Government policies profoundly affect both business and labor. One need turn no further than the present economic stabilization program for a compelling illustration of the extent to which Federal policy is the critical detriment of corporate and union health. If an organization, whether it be the NAM, the AMA or the AFL-CIO, believes that certain candidates pose a threat to its well-being or the well-being of its members or stockholders, it should be able to get its views to those members or stockholders. As fiduciaries for their members and stockholders the officers of these institutions have a duty to share their informed insights on all issues affecting their institution with their constituents. Both union members and stockholders have the right to expect

this expert guidance. In determining where their self-interest lies they have no other comparable source of information. Indeed, as the Supreme Court stated in the CIO case, if Congress were to prohibit communications between an organization and its members concerning "danger or advantage to their interests from the adoption of measures or the election to office of men, espousing such measures, the gravest doubt would arise in our minds as to its constitutionality."

Second, it has also been recognized that it is proper to allow corporations and unions to conduct nonpartisan registration and get out the vote campaigns. Indeed, any other conclusion would have been contrary to the basic precept that the exercise of the franchise is not merely a political right but a civic duty. The health of our representative form of government requires that every possible step be taken to maximize the number of eligible voters who go to the polls. Attempts to restrict the number who vote are inimical to the democratic precepts upon which the political process rests.

Of course, such campaigns must be nonpartisan. Within the constraints set by an organization's resources which may require it to concentrate on particular areas where its members are most numerous or where a race of particular importance is to be held, it must make an effort to reach all those in the area and not merely those who will vote in a certain way. A failure to respect this limitation would, of course, be a violation of section 610.

It is not entirely clear to me, even after substantial study, as to whether the present law requires such campaigns to be limited to members and stockholders. It is my judgment that they should be, and the amendment I propose insures that such a limitation would have to be observed. The dividing line established by section 610 is between political activity directed at the general public in connection with

Federal elections which must be financed out of political donations and activities directed at members or stockholders which may be financed by general funds. As a matter of principle this line of demarcation supports the proposed limitation and there is no consideration of which I am aware that requires an exception to the basic guiding theory of this provision.

Finally, there can be no doubt that union members or stockholders should have the right to set up special political action funds supported by voluntary donations from which political "contributions and expenditures" can lawfully be made. As Senator Taft stated in his floor explanation of section 610:

> If [union members or stockholders] are asked to contribute directly . . . to the support of a labor [or management] political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. But the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders. 93 Cong. Rec. 6440

For the underlying theory of section 610 is that substantial general purpose treasuries should not be diverted to political purposes, both because of the effect on the political process of such aggregated wealth and out of concern for the dissenting member or stockholder. Obviously, neither of these considerations cuts against allowing voluntary political funds. For no one who objects to the organization's politics has to lend his support, and the money collected is that intended by those who contribute to be used for political purposes and not money diverted from another source.

The essential prerequisite for the validity of such political funds is that the contributions to them be voluntary. For that reason the final section of this amendment makes it a violation of section 610 to use physical force, job discrimination, financial reprisals or the threat thereof, in seeking contributions. This is intended to insure that a solicitor for COPE or BIPAC cannot abuse his organizational authority in seeking political contributions. Of course, nothing can completely erase some residual effects on this score, any more than the law can control the mental reaction of a businessman asked for a contribution by an individual who happens to be his banker, or of a farmer approached by the head of his local farm organization. The proper approach, and the one adopted here, is to provide the strong assurance that a refusal to contribute will not lead to reprisals and to leave the rest to the independence and good sense of each individual.

As a further safeguard the proviso also makes it a violation for such a fund to make a contribution or expenditure from money collected as dues or other fees required as a condition of membership or employment or obtained through commercial transactions. This insures that any money, service, or tangible item—such as a typewriter, Xerox machine, and so forth—provided to a candidate by such a fund must be financed by the voluntary political donations it has collected.

At the present time there is broad agreement as to the essence of the proper balance in regulating corporate and union political activity required by sound policy and the Constitution. It consists of a strong prohibition on the use of corporate and union treasury funds to reach the general public in support of, or opposition to, Federal candidates and a limited permission to corporations and unions, allowing them to communicate freely with members and stockholders on any subject, to attempt to convince members and stockholders to register and vote, and to make political con-

tributions and expenditures financed by voluntary donations which have been kept in a separate segregated fund. This amendment writes that balance into clear and unequivocal statutory language.

(117 Cong. Rec. H. 11477-11479 (Daily Ed., Nov. 30, 1971)[1]

4. The Conference Committee Report's Explanation of § 205 of Public Law 92-225

CRIMINAL CODE AMENDMENTS

CONTRIBUTIONS OR EXPENDITURES BY NATIONAL BANKS, CORPORATIONS, OR LABOR ORGANIZATIONS

AMENDMENT TO SECTION 610 OF TITLE 18, UNITED STATES CODE

Senate bill.— No comparable provision.

House amendment.— Section 305 of the House amendment amended section 610 of title 18 of the United States Code, relating to contributions or expenditures by national banks, corporations or labor organizations, to add a new paragraph defining the phrase "contribution or exepnditure" to include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign commitee, or political party or organization, in connection with any election to any of the offices referred to in such section. In the case of a contribution or expenditure by a national bank, or by a corporation organized by authority of any law of Congress, section 610 refers to "any political office". In the case of a contribution or expenditure by any corporation whatever, or by any labor organization, section 610 refers to the offices of presidential and vice presidential electors; Senator; and Representative in, or Delegate or Resident Commissioner to, the Congress.

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[1] The debate following Representative Hansen's explanation of his amendment, which led to its adoption by a teller vote of 233 to 147, is set out at 177 Cong Rec. 11479-11489 (Daily Ed., Nov. 30, 1971).

The House amendment specifically provided that the "contribution or expenditure" did not include—

(1) communications by a corporation to its stockholders and their families or by a labor organization to its members and their families;

(2) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families or by a labor organization aimed at its members and their families;

(3) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.

The House amendment further provided that it would be unlawful for any such separate segregated fund to make a contribution or expenditure—

(A) by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat thereof; or

(B) by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment; or

(C) monies obtained in any commercial transaction.

Conference substitute.—The conference substitute is identical with the House amendment except that the phrase "contribution or expenditure" does not include a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business.

(Senate Report 92-580, 92nd Cong. 1st Sess, pp. 30-31)

3. Representative Hansen's Additional Explanation of His Amendment to 18 U.S.C. § 610 Delivered During the Floor Debate on the Conference Committee Report

Mr. HANSEN of Idaho. Mr. Speaker, I take this time because questions have recently been raised as to the purpose and effect of the so-called Hansen amendment to the

election reform bill. This amendment was adopted by the House of Representatives by a margin of 233 to 147 and was retained by the joint Senate-House conference committee.

At the outset, I would like to make two points. First, I stand fully behind every word of the statement I made in explanation of my amendment and in answer to questions during the course of the debate on the amendment. Second, I will repeat what I stated several times during the course of the debate that the purpose and effect of my amendment is to codify and clarify the existing law and not to make any substantive changes in the law.

It is significant that I gave notice to the House and to the public of my intention to introduce my amendment approximately 2 weeks before it was considered on the floor of the House. On November 17, 1971, I inserted the full text of the proposed amendment and an explanation in the CONGRESSIONAL RECORD on page H11232. The amendment was offered and debated on November 30, 1971. Prior to the time of the debate no question was raised by anyone in the Justice Department or by anyone else to my knowledge concerning the provisions of the amendment that have recently been questioned. Those provisions relating to the legality of a separate, segregated voluntary political fund were not raised during the course of the debate. In fact, most of the attention during the debate was centered on the feature of the bill which represented the principal difference between the Hansen amendment and the so-called Crane amendment; that is, the extent to which union or corporate funds could be used to finance a get-out-the-vote drive directed at the union members or the corporate stockholders.

Mr. HAYS. Mr. Speaker, will the gentleman yield?

Mr. HANSEN of Idaho. I yield briefly to the gentleman from Ohio, but I would like to complete my statement.

Mr. HAYS. I will say to the gentleman that what he is saying will be the legitimate legislative history and that what somebody down in the Department of Justice, some Assistant Attorney General's opinion, is worth exactly as much as the piece of paper it is printed on, no more and no less.

Mr. HANSEN of Idaho. I thank the gentleman.

Mr. DENNIS. Mr. Speaker, will the gentleman yield?

Mr. HANSEN of Idaho. I shall yield to the gentleman when I complete my statement.

I can certainly understand why the questions now being raised were not raised prior to or during the course of the debate on the amendment. The Hansen amendment is consistent with the legislative intent expressed by the original author of section 610, the late Senator Robert Taft of Ohio. The Hansen amendment is consistent with the position taken by the Justice Department in the brief it filed with the U.S. Supreme Court in the Pipefitter case and with the position taken by the Justice Department when the case of United States against UAW was before the Supreme Court. The Hansen amendment is also consistent with the provisions of the so-called Crane amendment dealing with the legality of a separate, voluntary political fund. The pertinent portions of both amendments are as follows:

HANSEN AMENDMENT

"As used in this section, the phrase 'contribution or expenditure' . . . shall not include . . . the *establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes* by a corporation or labor organization: *Provided,* That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination or financial reprisal; or by

dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction." (Emphasis supplied.)

CRANE AMENDMENT

(Sec. 8 of H.R. 11060)

Nothing in this section shall preclude an organization from *establishing and administering a separate contributory fund for any political purpose*, including voter registration or get-out-the-vote drives, if all contributions, gifts, or payments to such fund are made freely and voluntary, and are unrelated to dues, fees, or other moneys required as a condition of membership in such organization or as a condition of employment. (Emphasis supplied)

It has been suggested recently that the so-called Hansen amendment to the present 18 U.S.C. section 610 has the purpose and effect of thwarting present prosecutions against the Pipefitters Local 562 and the Seafarers International Union as well as a contemplated prosecution against the Marine Engineers Beneficial Association. As I will show, this contention is completely without substance.

In its original draft form, the Hansen amendment made it unlawful for a labor political committee to make a contribution or expenditure by utilizing money secured by physical force or job discrimination or threat thereof. Subsequently, when the allegation was made that the Marine Engineers Beneficial Association had coerced contributions to its political action fund by threatening pension cutoffs or reductions, the amendment was redrafted and broadened in order to make the use of financial reprisals or threats thereof unlawful. Therefore, far from undercutting any action the Department of Justice may see fit to take in this case, if action is warranted, the Hansen amendment actually strengthens the Department's hand.

Again, in the Seafarers' case, the Government's contention insofar as it can be gleaned from the indictment and

from the newspaper stories which led to the indictment, is that section 610 was violated because the payments were coerced through job discrimination and threats of job discrimination. That precise evil is also covered and prohibited in explicit terms in the Hansen amendment.

With respect to the Pipefitters' case, the thrust of the prosecutions there, as is evident from the Government's briefs, is that section 610 was violated because the Pipefitters' Political Action Fund utilized assessments whose payment was required as a condition of employment. That precise evil is covered in explicit terms in the Hansen amendment.

The Hansen amendment is completely consistent with the basic theory of the Government's prosecution in United States against Pipefitters Local 562—United States Supreme Court No. 70-74 October Term, 1971—as stated in the Solicitor General's brief filed with the Court in November 1971. In that brief Government states:

> The essential charge of the indictment and the theory on which the case was tried was that the Fund, although formally set up as an entity independent of Local 562, was in fact a union fund, controlled by the union, *contributions to which were assessed by the union as part of its dues structure,* collected from nonmembers in lieu of dues, and expended, when deemed necessary, for union purposes and the personal use of the directors of the Fund. (Brief for the United States at p. 23, emphasis added.)

The Hansen amendment makes it perfectly plain that Federal contributions or expenditures financed by "dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment" are unlawful. Thus, under the Hansen amendment the Government would be entitled to a guilty verdict whenever it meets the burden of proving to a properly in-

structed jury that contributions were made from assessments which were part of a union's dues structure.

There could be no dispute on this point for in his floor explanation of the 18 U.S.C. section 610 Senator Taft emphasized that:

> [U]nions can * * * organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for [the] purpose [of making federal political expenditures and contributions]. 93 Congressional Record 6440.

In light of this explanation the Government advised the Supreme Court in *United States* v. *UAW*, 352 U.S. 567, that section 610 "had not silenced the political voice of labor unions" since unions may "properly" use "special funds contributed voluntarily by the membership" for "purely political activities." Brief for the United States in the UAW case at pages 37 and 38. And, consistent with that view, despite the fact that unions, as well as the Chamber of Commerce and the NAM, have openly and notoriously carried on political activities through labor and business political organizations such as AFL-CIO, COPE, and BIPAC for almost 30 years, the Government has never prosecuted either a union or a corporate group on the theory that unions and corporations have no right to set up and run legitimate labor or corporate political organizations such as COPE and BIPAC.

Thus as Senator DOMINICK stated, speaking in support of an amendment to section 610 he offered to the other body, the general view is that:

> If a member wishes to pay money voluntarily to a candidate or to a labor organization fund for a candidate or even to a fund which the union will determine how it is to be spent, I have no objections.
>
> 117 Congressional Record, S. 1353 August 4, 1971.

The Hansen amendment building on this consensus tracks this language with a single addition making explicit what is implicit in the Crane amendment—that unions and corporations may solicit contributions to these funds as long as they do so without attempting to secure money through "physical force, job discrimination, financial reprisals" or the threat thereof. Thus the Hansen amendment does not break new ground, it merely writes currently accepted practices into clear and explicit statutory language. . . .

(118 Cong. Rec. H94-95 (Daily Ed., Jan. 19, 1972))

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Supreme Court, U.S.
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No. 70-74

In the Supreme Court of the United States

OCTOBER TERM, 1971

PIPEFITTERS LOCAL UNION NO. 562, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONERS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM AFTER ARGUMENT AND PETITIONERS' SUPPLEMENTAL MEMORANDUM

MEMORANDUM FOR UNITED STATES

ERWIN N. GRISWOLD,
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MEMORANDUM FOR UNITED STATES

The United States neither opposes nor concurs in petitioners' motion for leave to file a supplemental memorandum after argument in this case. As stated in our letter to the Clerk of February 14, 1972, informing the Court of the recent amendment to 18 U.S.C. 610, our position is that the present case is governed by Section 610 as it existed during the acts of the defendants, and their trial and conviction. See 1 U.S.C. 109.

Moreover, this view is affirmed by the specific discussion of the present case in the course of the amendment's consideration by the House of Representatives

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set forth at pp. 18a–20a of the Appendix to Petitioners' Supplemental Memorandum. Indeed, Representative Hansen, the sponsor of the amendment, stated on the floor of the House (*id.* at 19a):

> The Hansen amendment is completely consistent with the basic theory of the Government's prosecution in United States against Pipefitters Local 562—United States Supreme Court No. 70–74 October Term, 1971—as stated in the Solicitor General's brief filed with the Court in November 1971.

He then quoted a passage from the government's brief (*ibid.*).

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1972.

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IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U. S.
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OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, et al.,
Petitioners,

v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals
for the Eighth Circuit

PETITIONERS' SUPPLEMENTAL BRIEF

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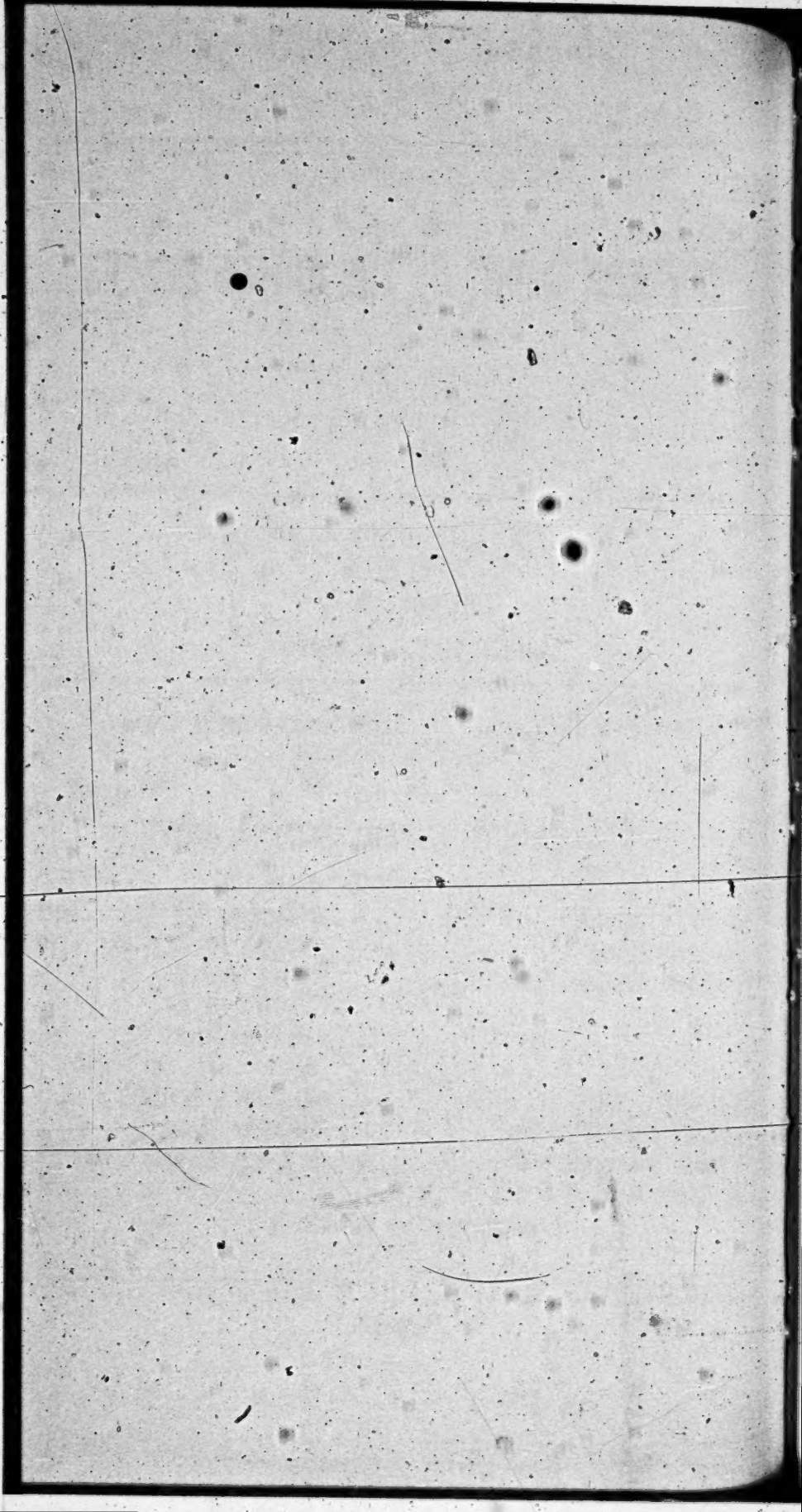


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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 70-74

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v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals
for the Eighth Circuit

PETITIONERS' SUPPLEMENTAL BRIEF

Since the inception of the case at bar, petitioners have always maintained that to sustain a conviction for violation of 18 U.S.C., § 610 with respect to the Pipefitters' Voluntary Fund, required proof that contributions to the Fund were made involuntarily. See A. 27-28, 30, 32, 34-44; Motion Tr. 27-29; A. 1092-93, 1095, 1121-25; Pet. Br. 52-54, 70-71.[1]

[1] "A." references are to the Appendix filed herein in two volumes; "Motion Tr." references are to the transcript of proceedings in the district court had on hearings of various motions on August 9, 1968; "Pet. Br." references are to the original brief on the merits filed herein by petitioners, and "Gov. Br." references are to the original brief on the merits filed herein by the government.

Inasmuch as the Voluntary Fund was actually segregated from the dues and assessments of the union; was not considered by the members as part of the general treasury of the union, and was not contributed to by all of the members of the union, it was petitioners' position that the only conceivable way the Voluntary Fund could be considered as dues or assessments of the union itself, rather than a separate fund, was if the members did not voluntarily contribute to the Fund.

By its enactment of § 205 of Public Law 92-225 (Federal Election Campaign Act of 1970), Congress clearly confirmed that meaning of 18 U.S.C., § 610, which petitioners have consistently urged throughout the course of these proceedings.[2] Congress' purpose in enacting § 205 was not to change 18 U.S.C., § 610, but rather to codify and put in more precise language the prohibitions of § 610 as it existed. This is patently obvious from the legislative history with respect to § 205. As Representative Hansen, the sponsor of the legislation, stated at the outset of the floor debate on the conference committee report:

> "Second, I will repeat what I stated several times during the course of the debate that the purpose and

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[2] In pertinent part, § 205 of Public Law 92-225, states as follows:

> "As used in this section, the phrase 'contribution or expenditure' . . . . shall not include . . . the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: Provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction."

Section 205 insofar as pertinent to the instant case, is identical with § 305 of H.R. 11060, 92d Cong., 1st Sess. (1971), which

effect of my amendment is to codify and clarify the existing law and not to make any substantive changes in the law." 118 Cong. Rec. 94 (daily ed. Jan 19, 1972).

Thereafter, Representative Hays of Ohio stated:

> "I will say to the gentlemen [Rep. Hansen] that what he is saying will be legitimate legislative history and that what somebody down in the Department of Justice, some Assistant Attorney General's opinion, is worth exactly as much as the piece of paper it is printed on, no more and no less." *Ibid.*

Thus, although not altering any of the attributes of permissible union political organizations, § 205 does effect a substantive change in 18 U.S.C. § 610, as prosecuted by the government and as construed and applied by the lower courts. Congress, in codifying and clarifying the law existing at the time of the instant prosecution, pronounced positively that for all time, petitioners always had the right to make political contributions in the manner for which they were prosecuted and convicted.

Accordingly, the instant case must be reversed under that line of cases which hold that the repeal of a criminal

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is the amendment to the original bill offered by Representative Hansen of Idaho.

Prior to the Hansen Amendment, there was an amendment to H.R. 11060 offered by Representative Crane of Illinois, which likewise gave 18 U.S.C. § 610, the same meaning as petitioners have strenuously urged. The Crane Amendment in pertinent part was as follows:

> "Nothing in this section shall preclude an organization from establishing and administering a separate contributory fund for any political purpose, including voter registration or get-out-the-vote drives, if all contributions, gifts, or payments to such fund are made freely and voluntary, and are unrelated to dues, fees, or other moneys required as a condition of membership in such organization or as a condition of employment."

statute or the enactment of a statute by Congress, which substitutes a right where previously it was a crime, abates the prosecution. See e.g. **United States v. Schooner Peggy**, 1 Cranch 103, 110, 2 L.Ed. 49 (1801); **Yeaton v. United States**, 5 Cranch 281, 283, 3 L. Ed. 101 (1809); **Maryland for Use of Washington County v. Baltimore & O.R. Co.**, 3 How. 534, 552, 11 L. Ed. 714 (1845); **Norris v. Crocker**, 13 How. 429, 438, 14 L. Ed. 210 (1851); **United States v. Tynen**, 11 Wall. 88, 95, 20 L. Ed. 153 (1871); **United States v. Reisinger**, 128 U.S. 398, 401, 9 S. Ct. 99, 32 L. Ed. 480 (1888); **United States v. Chambers**, 291 U.S. 217, 222-23, 54 S. Ct. 434, 435, 78 L. Ed. 763 (1934); **Massey v. United States**, 291 U.S. 608, 54 S. Ct. 534, 78 L. Ed. 1019 (1934); **Hamm v. Rock Hill**, 379 U.S. 307, 312-15, 85 S. Ct. 384, 389-91, 13 L. Ed. 2d 300 (1964). These cases, which upheld the doctrine of abatement,[3] involved either the repeal of a statute or the enactment of a new statute making conduct noncriminal, which conduct was proscribed by another

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[3] The doctrine of abatement is well established in American jurisprudence, originating in English common law. See, e.g. **Rex v. Cator**, 4 Burr. 2026, 98 Eng. Rep. 56 (1767); **King v. Davis**, 1 Leach 271, 168 Eng. Rep. 238 (1783). The doctrine can be traced in this country to **United States v. Schooner Peggy**, *supra*;

In 1871, Congress to avoid the effect of this doctrine enacted a federal saving statute (16 Stat. 432), which in its present form (61 Stat. 635, 1 U.S.C. § 109) provides as follows:

> "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability."

criminal statute. Here, however, Congress has gone further than merely failing to vivify or enliven 18 U.S.C. § 610, as prosecuted by the government and construed and applied by the lower courts; nor for that matter has Congress merely substituted a right for a crime. Rather, Congress re-affirmed that even prior to the enactment of § 205, petitioners' conduct was lawful.

The federal saving statute, 1 U.S.C. § 109, therefore, is totally inapposite to the case at bar. This Court, in **Hamm v. Rock Hill,** *supra* at 379 U.S. 314, 85 S. Ct. 390, stated that the federal savings statute "was meant to obviate mere technical abatement such as that illustrated by the application of the rule in Tynen decided in 1871." In **United States v. Tynen,** *supra*, a substitution of a new statute with greater penalties was held to abate a previous prosecution.

Section 205 of the Federal Election Campaign Act of 1971 is not a technical abatement of the instant prosecution, as that in **Tynen.** Section 205 is well beyond the narrow language of amendment and repeal, so that the federal saving statute can in no way nullify abatement of the instant case.

This is so, despite the protestation at page 2 of the Memorandum for United States that Representative Hansen stated on the floor of the House that "[t]he Hansen amendment is completely consistent with the basic theory of the government's prosecution" in this case. What the government has failed to quote to the Court, however, are the remarks of Representative Hansen immediately preceding that statement quoted by the government, which forms the basis for the quoted statement as follows:

> "With respect to the Pipefitters' case, the thrust of the prosecutions there, as is evident from the government's briefs, is that section 610 was violated

> because the Pipefitters' Political Action Fund utilized **assessments whose payment was required as a condition of employment.** That precise evil is covered in explicit terms in the Hansen amendment." (Emphasis supplied.) 118 Cong. Rec. 95 (daily ed. Jan. 19, 1972).

Petitioners fail to find anything in the indictment which even remotely resembles an allegation that contributions to the Pipefitters' Voluntary Fund were "assessments whose payment was required as a condition of employment."

Moreover, nothing contained in the indictment approaches a charge that petitioners conspired to violate 18 U.S.C., § 610, by reason of doing any of the other things which would make contributions to federal candidates by the Pipefitters' Voluntary Fund unlawful under the proviso of § 205; namely, "utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization . . ., or by monies obtained in any commercial transaction." To the contrary, the government throughout the trial strenuously argued that it is not necessary for a violation of 18 U.S.C., § 610 to prove involuntariness on the part of contribtuors to the Fund (A. 56-57; Motion Tr. 35-36; A. 1093). As such, the instant prosecution, having been based on an indictment which has always been inconsistent with the prohibitions of 18 U.S.C., § 610, by virtue of § 205, must be abated and the convictions reversed.

Additionally, no evidence introduced by the government would require a different result. Certainly, at least with respect to the lone remaining individual petitioner, George Seaton, the evidence as to his participation in an

alleged conspiracy to establish and maintain the Pipefitters' Voluntary Fund contrary to 18 U.S.C., § 610 is practically non-existant. In fact, the testimony of most of the government's own witnesses, as we have previously detailed in our original brief, evidences that payments to the Pipefitters' Voluntary Fund were completely voluntary, without ever the slightest element of coercion. See Pet. Br. 29-36. Likewise, the defense evidence overwhelmingly demonstrates the lack of compulsion on contributors to the Fund, so much so that out of seventy-seven persons testifying on behalf of the petitioners, who were either members of Local 562 or worked under the jurisdiction of Local 562, thirty-two of them testified they either did not contribute to the Voluntary Fund, had never contributed, or did not contribute regularly under the formula voted on by the contributors. See Pet. Br. 36-38 for a detailed statement of defense evidence. We submit, therefore, that the evidence having failed to show any semblance of involuntariness or compulsion on the contribtuors to the Voluntary Fund, requires an abatement of the instant prosecution, in light of § 205.

In any event, at the very least, the enactment of § 205, requires that the case at bar be remanded to the district court for a new trial.

In view of the recent enactment, the instant case was submitted to the jury exactly opposite to Congress' interpretation of 18 U.S.C. § 610. The jury was instructed that "the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money" (A. 1116).

All of the things which the Court instructed the jury to consider in convicting the defendants, save the issue

of involuntariness, were clearly intended by Congress to be permissible; that is, that political money earmarked could be routinely collected at regular intervals at job sites; routinely collected by union stewards, foremen, area foremen, general foremen, or other agents and officers of the union; determined by a formula based upon the amount of hours or overtime hours worked upon a job under the jurisdiction of the union; at one rate for members and at a different rate for nonmembers; begun, continued and terminated with employment on a job under the jurisdiction of the union by the principal officers of the union; and the record or records used in the collection of the contributions to the Fund may be similar to those employed from time to time by the union in the collection of its regular dues and assessments (A. 1113-15).

These were items, which the Court instructed the jury to consider to determine whether the Fund was in fact monies of the union and a device to evade the law (A. 1113-15). Indeed, it is now clear that political monies need not be kept separate from the union itself, but only in a separate, segregated fund. Congress has now confirmed that that was its original intent in enacting 18 U.S.C. § 610.

Over the government's objections, the Court refused petitioners' requested instructions S, T, Z, AA, BB, VV and YY (Pet. Br. 72-73, note 21), which would have submitted the issue of voluntariness to the jury. Specifically, one of petitioners' requested instructions AA, reads as follows:

> "The Court instructs the jury that the law permits labor union members to set up a fund or organization for the collection of money to be used for making contributions to candidates for political office. The law merely prohibits union dues or assessments from being used for such purposes. Therefore if you

find that contributions made to the Political, Educational, Legislative, Charity and Defense Fund were made by members of Local 562 voluntarily and did not constitute the payment of union dues or assessments you must find the defendants not quilty" (A. 1097-98).

See the other requested instructions contained in Pet. Br. 72-73, note 21. (A. 1097-1100).

In light of the recent enactment of § 205 which clarifies Congress' original intent in passing 18 U.S.C. § 610, the refusal of the trial court to give any of petitioners' requested instructions is plain reversible error. Indeed, even the Government now seemingly concedes that issue. See, Gov. Br. 30-31.

In passing, we also note that the enactment of § 205 of the Federal Election Campaign Act of 1971 points up that 18 U.S.C. § 610 was so vague, uncertain and indefinite that Congress had to enact new legislation in order to clarify it.

CONCLUSION

For the foregoing reasons, in addition to those stated in petitioners' original brief, it is respectfully submitted that the convictions should be reversed.

Respectfully submitted

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460-099—72

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70–74

PIPEFITTERS LOCAL UNION NO. 562 ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

After hearing oral argument in this case the Court has requested the parties to file supplemental briefs addressed to the following question:

> Does § 205 of the Federal Election Campaign Act of 1971 (P.L. 92–225) affect the decision in this case, and, if so, with what result? More particularly, does § 205 effect a substantive change in 18 U.S.C. 610 in any way material to this case, as for example, by altering any of the attributes of permissible union political organizations, such as the method of organization or administration or the method of solicitation or collection of contributions? If so, must this prosecution abate under the doctrine of *United States* v. *The Schooner Peggy,* 1 Cranch 103, and its progeny? Or does the federal saving statute, 1 U.S.C. 109, nullify any abatement of the prosecution? In answering the latter ques-

tion, what effect should be given to *Hamm* v. *City of Rock Hill*, 379 U.S. 306?

The statute, 18 U.S.C. 610, as originally enacted and as amended makes it unlawful for any labor organization or corporation to make a "contribution" or "expenditure" in connection with a federal election. The statute did not as originally enacted define the scope and meaning of either "contribution" or "expenditure." While the instant case was pending in this Court, Congress, in Section 205 of the Federal Election Campaign Act of 1971, amended 18 U.S.C. 610 to define "contribution" and "expenditure." The amendment, so far as pertinent, provides:

> As used in this section, the phrase contribution or expenditure * * * shall not include * * * the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: Provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

We submit, that, as Congressman Hansen, the sponsor of the amendment, stated, and as petitioners them-

selves have asserted (Pet. Supp. Memorandum p. 3), the purpose and effect of the amendment "is to codify and clarify the existing law and not to make any substantive changes in the law" (118 Cong. Rec. H 94 (Daily ed., Jan. 19, 1972)). It is our position that, on the theory on which this case was presented to the jury, a violation was established under the statute both as originally enacted and as amended.

I

THE NEW AMENDMENT MAKES NO SUBSTANTIVE CHANGE IN SECTION 610 MATERIAL TO THIS CASE

The new amendment makes clear: (1) that unions may establish, administer and solicit contributions to a "separate segregated fund to be utilized for political purposes" and (2) that such a fund is within the prohibition of the statute if the money therefor is "secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or a condition of employment." The amendment does not speak in any way to Section 610's prohibition of political contributions by a union out of general union funds—the prohibition on which the present prosecution was based. The amendment, insofar as is here relevant, is concerned only with the statute's limitations on union solicitation and administration of a "separate segregated fund to be utilized for political purposes," but the entire theory on which the present prosecution was based and submitted to

the jury was that the Fund involved here was not such a fund but was, instead, a mere artifice or device by which general union monies were contributed to political campaigns.

Thus, we submit, the charge of the indictment and the facts established at the trial in this case show a violation of the statute both as originally enacted and as amended. As stated in the government's brief (p. 23), the "essential charge of the indictment and the theory on which the case was tried [and submitted to the jury] was that the [Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense] Fund, although formally set up as an entity independent of Local 562, was in fact a union fund, controlled by the union, contributions to which were assessed by the union as part of its dues structure, collected from non-members in lieu of dues, and expended, when deemed necessary, for union purposes and the personal use of the directors of the Fund." The trial court instructed the jury that the statute "does not prohibit any person from making or agreeing to make such [political] contributions or setting up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization." The trial judge also instructed the jury to take into consideration a number of factors in deciding whether the Fund was an independent fund or in reality merely a part of the union's general funds. Among these were the regularity of payments, the method of collection, whether or not contributions to the fund were required

as a condition of employment, the voluntariness of the payments, and the uses made of the Fund (see Govt. Br. 16–20, 23–24).

In short, the case was tried on the theory that the fund here involved was *not* the kind of a fund which the amended statute permits but was the kind of a fund which was and still is a violation of Section 610—a fund which, while ostensibly separate, was in fact a union fund, supported by money collected as union money and used, when deemed desirable, as general union funds.

The issue which the amendment, insofar as relevant here, was designed to clarify was whether a separate segregated fund to receive political contributions had to be administered outside the union organization or whether a truly separate fund was outside the scope of the statute even if administered by the union. On this the government's view was clear before the amendment. We stated (Govt. Br. 27, note 7):

> It is still petitioners' assertion that the Fund was a separate organization similar to the old C.I.O.–P.A.C. and the present COPE, and countless other independent political committees supported by voluntary labor contributions (See, Pet. Br. 92). If that were all the evidence established here, we would agree that the government failed to make its case. Nor do we dispute appellants' conclusion, following their review of the legislative history of Section 610, that a union could "establish a political organization for the purpose of receiving ear-marked political monies directly from union members * * *" (Pet. Br. 62). Our point is that that is precisely what Local 562 did not do in this case.

Our position always has been and remains that what the jury had to find in order to convict Local 562 in this case, under the court's charge, was that the political fund here was in actuality a general union fund, the moneys of which could not lawfully be expended for political purposes before or after the amendment.

Congress so recognized in enacting the amendment here at issue. Congressman Hansen, the sponsor of the amendment, in addition to saying that the purpose and effect of his amendment "is to codify and clarify the existing law and not to make any substantive changes in the law" (118 Cong. Rec. H 94 (Daily ed., Jan. 19, 1972)), specifically stated that the amendment would have no effect on this very case *id.* at H 95):

> The Hansen amendment is completely consistent with the basic theory of the Government's prosecution in United States against Pipefitters Local 562—United States Supreme Court No. 70–74 October Term, 1971—as stated in the Solicitor General's brief filed with the Court in November 1971. * * *

Congressman Hansen then quoted the passage from page 23 of the government's principal brief, showing that the government's theory was that the fund in the instant case "was in fact a union fund, controlled by the union, contributions to which were assessed by the union as part of its dues structure."

The legislative history thus supports our position that the amendment made no substantive change in any way material to this case. The question of abatement, therefore, does not arise.

II

EVEN IF IT WERE ASSUMED ARGUENDO THAT THE AMENDMENT MATERIALLY CHANGES SECTION 610, ABATEMENT OF THIS PROSECUTION WOULD BE IMPROPER

Even if it were assumed, contrary to our submission in Point I, *supra,* that Section 205 does change 18 U.S.C. 610 in a way material to this case, abatement would be improper here. Whether a change in the law abates a pending prosecution depends upon the legislative intention when making the change. See *Hamm* v. *City of Rock Hill,* 379 U.S. 306, 313–316. Here there is no problem of inferring legislative intent because Congress clearly expressed its intention that pending prosecutions should not abate. Congressman Hansen, arguing in favor of the amendment to Section 610, specifically referred to the only pending cases against labor unions which the amendment could conceivably affect[1] and specifically denied that the

[1] Significantly, this is not an area of law in which there might have been numerous pending prosecutions unknown to the legislative sponsors of the amendment. The only pending case involving a labor union not specifically mentioned by Congressman Hansen in the floor debate is *United States* v. *W. A. Boyle, et al.,* 1741–71 (D. D.C.) (indictment pending). The indictment in that case charges a political expenditure directly from the union's treasury—conduct which clearly violates Section 610, and as to which the amendment could have no conceivable relevance.

Five prosecutions against national banks for loans to political candidates have been terminated as a result of other provisions of the amendment. In four, an appeal by the United States from the dismissal of the indictments has been withdrawn, and in the fifth the United States Attorney has been directed to file a *nolle prosequi* motion requesting dismissal of the indictment. Prosecutorial discretion has been used to terminate

amendment "has the purpose and effect of thwarting [these] present prosecutions" (118 Cong. Rec. H 94 (Daily ed., Jan. 19, 1972)).

Moreover, even in the absence of this specific expression of the legislative intent, and still assuming *arguendo* that the amendment materially changes Section 610 for present purposes, 1 U.S.C. 109, the federal savings statute, would keep this prosecution from abating. Section 109 provides in part:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. * * *

This statute reverses the common law rule that a statutory change making lawful conduct which was previously criminal abates prosecutions for such conduct committed prior to the change in the statute. *United States* v. *Reisinger*, 128 U.S. 398; *Hamm* v. *City of Rock Hill*, *supra*, 379 U.S. at 314. Thus, under 1 U.S.C. 109 this prosecution is saved [2] even if

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these cases because the conduct charged is now clearly lawful under the amended Section 610. The legislative history evinces no congressional intent to save those prosecutions. Thus, whether or not the amendment with respect to bank loans would have been viewed as abating those prosecutions, no such result should follow with respect to the pending labor union cases where the congressional history expressly stated an intent that they should go forward.

[2] 1 U.S.C. 109 applies to save prosecutions under statutes changed by amendment as well as those nullified by repeal. *Moorehead* v. *Hunter*, 198 F. 2d 52 (C.A. 10).

the amendment to Section 610 could be viewed as making no longer unlawful the previously criminal conduct of these defendants. This result is not affected by this Court's decisions in *Hamm* v. *City of Rock Hill*, 379 U.S. 306, and *Bell* v. *Maryland*, 378 U.S. 226. In *Hamm* v. *City of Rock Hill*, *supra*, 379 U.S. at 314, this Court observed that 1 U.S.C. 109 "was meant to obviate mere technical abatement" which common law inferred from repeal of a criminal statute (see *United States* v. *The Schooner Peggy*, 1 Cranch 103; *United States* v. *Tynen*, 11 Wall. 88). However, in *Hamm*, *supra*, the Court distinguished the impact of the Civil Rights Act of 1964 from "amendment and repeal" of a criminal statute as follows (379 U.S. at 314):

> In contrast, the Civil Rights Act works no such technical abatement. It substitutes a right for a crime. So drastic a change is well beyond the narrow language of amendment and repeal. * * *

Here, at most there is a technical amendment of the statute. Hence, even if, contrary to our submission, that amendment were construed to remove the defendants' conduct from the statute's proscription, the prosecution is nonetheless saved by 1 U.S.C. 109, as well as by the legislative intent specifically stated by the sponsor of the instant amendment.

CONCLUSION

For the reasons stated herein, as well as in our principal brief and oral argument, the judgments below should be affirmed.

Respectfully submitted.

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MARCH 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972

(Slip Opinion)

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PIPEFITTERS LOCAL UNION NO. 562 ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 70–74. Argued January 11, 1972—Decided June 22, 1972

Petitioner union and three of its officers were convicted of conspiracy to violate 18 U. S. C. § 610, which prohibited a labor organization from making a contribution or an expenditure in connection with a federal election. Evidence indicated that the union from 1949 through 1962 maintained a political fund to which union members and others working under the union's jurisdiction were required to contribute and that that fund was then succeeded by the present fund, which was, in form, set up as a separate "voluntary" organization; union officials, nevertheless, retained unlimited control over the fund, and no significant change was made in the regular and systematic collection of contributions at a prescribed rate based on hours worked; union agents, moreover, continued to collect donations at jobsites on union time, and the proceeds were used for a variety of purposes, including political contributions in connection with federal elections; those contributions, on the other hand, were made from accounts strictly segregated from union dues and assessments, and although some of the contributors believed otherwise, donations to the fund were not, in fact, necessary for employment or union membership. Under instructions to determine whether the fund was in reality a union fund or the contributors' fund, the jury found each defendant guilty. The Court of Appeals rejected petitioners' challenges, and held that the fund was a subterfuge through which the union made political contributions of union monies in violation of § 610. The Federal Election Campaign Act of 1971, which became effective after oral argument here, added a paragraph at the end of § 610 that expressly authorizes labor organizations to establish, administer, and solicit contributions for political funds, provided

Syllabus

that the fund not make a contribution or expenditure in connection with a federal election by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat thereof, or by monies required as a condition of employment or union membership. *Held:*

1. Section 610, as confirmed by the Federal Election Campaign Act, does not apply to contributions or expenditures from voluntarily financed union political funds. A legitimate political fund must be separate from the sponsoring union only in the sense that there must be a strict segregation of its monies from union dues and assessments, and solicitation by union officials, although permissible, must be conducted under circumstances plainly indicating that donations are for a political purpose and that those solicited may decline to contribute without reprisal. Pp. 15–42.

2. Section 610 may be interpreted to prohibit the use of general union monies for the establishment, administration, or solicitation of contributions for union political funds. By clearly permitting such use, the Federal Election Campaign Act may, therefore, have impliedly repealed § 610. Pp. 42–46.

3. Even if there has been such an implied repeal, it, nevertheless, does not require abatement of the prosecution against petitioners because of the federal saving statute, 1 U. S. C. § 109. *United States* v. *Reisinger*, 128 U. S. 398, followed. *Hamm* v. *Rock Hill*, 379 U. S. 306, distinguished. Pp. 46–49.

4. The instructions to the jury were clearly erroneous because they permitted the jury to convict without finding that donations to the fund had been actual or effective dues or assessments. The sufficiency of the indictment is left open for determination on remand. Pp. 49–56.

434 F. 2d 1127, vacated and remanded to the District Court with instructions to dismiss indictment against petitioners Callanan and Lawler, both now deceased, and reversed and remanded to the District Court as to remaining petitioners.

BRENNAN, J., delivered the opinion of the Court, in which DOUGLAS, STEWART, WHITE, MARSHALL, and REHNQUIST, JJ., joined. POWELL, J., filed a dissenting opinion, in which BURGER, C. J., joined. BLACKMUN, J., took no part in the consideration or decision of the case.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 70–74

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June 22, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioners—Pipefitters Local Union No. 562 and three individual officers of the Union—were convicted by a jury in the United States District Court for the Eastern District of Missouri of conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 610. At the time of trial § 610 provided in relevant part:

> "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in . . . Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .
>
> "Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization; as the case may be, . . . in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or

both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

"For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist [*sic*] for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." [1]

The indictment charged, in essence, that petitioners had conspired from 1963 to May 9, 1968, to establish and maintain a fund that (1) would receive regular and systematic payments from Local 562 members and members of other locals working under the Union's jurisdiction; (2) would have the appearance, but not the reality of being an entity separate from the Union; and (3) would conceal contributions and expenditures by the Union in connection with federal elections in violation of § 610.[2]

---

[1] Section 371, in turn, provided:

"If two or more persons conspire . . . to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

[2] Omitting the overt acts charged, the indictment, filed May 9, 1968, stated in relevant part:

"The Grand Jury charges:

"1. That at all times hereinafter mentioned defendant Pipefitters Local Union No. 562, St. Louis, Missouri (hereinafter referred to as Local 562), affiliated with the United Association of Journeymen

The evidence tended to show, in addition to disbursements of about $150,000 by the fund to candidates in federal elections, an identity between the fund and the

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and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (hereinafter referred to as the United Association), was a labor organization within the meaning of Section 610 of Title 18, United States Code, that is to say, an organization in which employees participated and which existed, in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

. . . . . .

"3. That from on or about October 12, 1966, up to and including the date of the filing of this indictment, defendant Lawrence L. Callanan was an officer of defendant Local 562.

"4. That at all times hereinafter mentioned defendant John L. Lawler was an officer of defendant Local 562.

"5. That at all times hereinafter mentioned, defendant George Seaton was an officer of defendant Local 562.

. . . . . .

"7. That at all times hereinafter mentioned, the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund (hereinafter the Fund), was a fund of defendant Local 562, established, maintained, and administered by officers, employees, members, agents, foremen and job stewards of defendant Local 562, to effect a regular and systematic collection, receipt, and expenditure of moneys obtained from working members of defendant Local 562 and from working members of other labor organizations employed under the jurisdiction of defendant Local 562.

. . . . . .

"9. That from in or about 1963 and continuously thereafter up to and including the date of the filing of this indictment, in the City of St. Louis, in the Eastern District of Missouri and elsewhere, Local 562, Lawrence L. Callanan, John L. Lawler and George Seaton, the defendants herein, and John F. Burke and Edward J. Steska, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did conspire and agree with each other and with divers other persons to the grand jurors unknown, to violate Section 610 of Title 18, United States Code in that they did unlawfully, wilfully, and knowingly conspire

Union and a collection of well over $1 million in contributions to the fund by a method similar to that employed in the collection of dues or assesments. In par-

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and agree to have Local 562 make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for, and to wilfully consent to the making of such contributions and expenditures by Local 562.

"10. It was a part of said conspiracy that the defendants and co-conspirators would establish and maintain a special fund entitled 'Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund,' which fund would have the appearance of being a wholly independent entity, separate and apart from Local 562; and that the defendants and co-conspirators would thereby conceal the fact that Local 562 would make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for.

"11. It was further a part of the conspiracy that defendant John L. Lawler would be Director of the Fund and that at a certain time he would be succeeded as Director of the Fund by defendant Lawrence L. Callanan; and that the Director of the Fund would appear to have control and management of the Fund, including the receipt and disbursement of money and the keeping of its books.

"12. It was further a part of the conspiracy that defendants John L. Lawler and Lawrence L. Callanan would not have the books of the Fund audited, or afford members of defendant Local 562 and other pipefitters contributing to the Fund any accounting for the money on hand, paid into or disbursed from the Fund.

"13. It was further a part of the conspiracy that the defendants and co-conspirators, by means of the creation and operation of the Fund, would continue in new form the practice of collecting for political purposes One Dollar ($1.00) per day worked from members of defendant Local 562 and Two Dollars ($2.00) per day worked from non-member pipefitters employed on jobs within the jurisdiction of defendant Local 562.

"14. It was further a part of the conspiracy that the defendants and co-conspirators would waive and fail to enforce Section 180 of the Constitution of the United Association in order to facilitate the payment of monies into the Fund, by failing to collect from

ticular, it was established that from 1949 through 1962 the Union maintained a political fund to which Union members and others working under the Union's jurisdiction were in fact required to contribute and that that

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non-members of Local 562, working under its jurisdiction, a required travel card fee of not in excess of Eight Dollars ($8.00) per month, and in lieu thereof, collecting payments to the Fund at the rate of Two Dollars ($2.00) per eight-hour working day from such non-members.

"15. It was further a part of the conspiracy that the defendants and co-conspirators would cause general foremen, area foremen, job stewards, officers, agents, employees and other members of Local 562 acting in a supervisory capacity over members and pipefitters working on jobs under the jurisdiction of Local 562, to become agents of the Fund in order to facilitate the collection of monies for the Fund on a regular basis on job sites and at the headquarters of Local 562, 1242 Pierce Avenue, St. Louis, Missouri.

"16. It was further a part of the conspiracy that the defendants and co-conspirators, in order to facilitate an orderly, regular and systematic collection of contributions to the Fund, would cause the agents of the Fund, referred to in paragraph 15 of this Indictment to distribute to the pipefitters working at all job sites contribution agreement cards to be signed by such pipefitters, and to distribute to foremen and job stewards at such job sites printed collection sheets for the Fund upon which to record the number of hours worked by such pipefitters and the amount of the contributions paid by each into the Fund; and that such foremen or job stewards would advise newly employed pipefitters at such job sites of the existence of the Fund and of the rates of participation, that is, for members of Local 562, One Dollar ($1.00) per eight hours worked; and after January 1, 1965, Fifty Cents ($.50) per eight hours worked, and for members of other pipefitter locals Two Dollars ($2.00) per eight hours worked.

"17. It was further a part of the conspiracy that defendant Local 562 would make substantial contributions in connection with the 1964 General Election and the 1966 General Election and that defendants Lawrence L. Callanan and John L. Lawler would consent to such contributions by issuing checks drawn upon the account of the Fund in the approximate total amount of One Hundred Fifty Thousand Dollars ($150,000)."

fund was then succeeded in 1963 by the present fund, which was, in form, set up as a separate "voluntary" organization. Yet a principal Union officer assumed the role of director of the present fund with full and unlimited control over its disbursements. The Union's business manager, petitioner Lawler, became the first director of the fund and was later succeeded by petitioner Callanan, whom one Local 562 member described as "the Union" in explaining his influence within the local. Moreover, no significant change was made in the regular and systematic method of collection of contributions at a prescribed rate based on hours worked, and Union agents continued to collect donations at jobsites on Union time. In addition, changes in the rate of contributions were tied to changes in the rate of members' assessments. In 1966, for example, when assessments were increased from 2½% to 3¾% of gross wages, the contribution rate was decreased from $1 to 50¢ per day worked with the result that the change did not cause, in the words of the Union's executive board, "one extra penny cost to members of Local Union 562." At the same time, the contribution rate for nonmembers, who were not required to pay the prescribed travel card fee for working under Local 562's jurisdiction, remained the same at $2 per day worked, approximately matching the total assessment and contribution of members. Finally, in addition to political contributions, the fund used its monies for nonpolitical purposes, such as aid to financially distressed members on strike, and for a period of a few months, upon the vote of its members, even suspended collections in favor of contributions to a separate gift fund for petitioner Callanan.[3] Not surprisingly, various witnesses testified that

[3] These facts petitioners, in essence, concede in their brief, Petitioners' Brief, at 52–53:

"It was undisputed that contributions to the Fund were routinely made at regular intervals at job sites; that they were routinely

during the indictment period contributions to the fund were often still referred to as—and actually understood by some to be—assessments, or that they paid their contributions "voluntarily" in the same sense that they paid their dues or other financial obligations.[4]

On the other hand, the evidence also indicated that the political contributions by the fund were made from accounts strictly segregated from Union dues and assess-

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collected by union stewards, foremen, area foremen, general foremen, or other agents of the union; that they were determined by a formula based upon the amount of hours or overtime hours worked upon a job under the jurisdiction of the union; that they were at one rate for 562 members and at a different rate for members of other unions; that they began, continued and terminated with employment on a job under the jurisdiction of the union; that monies of the Fund were used to provide benefits to union members [as well as to make political contributions]; that non-members were not charged any dues and assessments, including travel card dues in the amount of eight dollars per month; that monies of the Fund were used in part to promote activities permitted to the union by its Constitution and by-laws; that contributions to the Fund were only requested and received from Journeyman Pipefitters working on jobs under the jurisdiction of Local 562, and not from any other classes of persons or organizations; that expenditures from the Fund were under the control of its director who was also the principal officer of the union; and that records used in the collection of the contributions to the Fund were similar to those employed from time to time by the union in the collection of its regular dues and assessments."

[4] See Appendix to Petitioners' Brief, at 197, 212; 270, 281–283; 294; 318, 323–324; 427, 432; 457, 462; 619–621; 698–699; 746; 843; 893; 903. Judge Van Oosterhout's panel opinion, adopted by the majority in the rehearing *en banc* below, 434 F. 2d 1127 (1970), succinctly makes the point: "It would appear to be unrealistic to believe that such a large number of workmen would make such substantial voluntary contributions to be used for political purposes unless they felt that their job security required them so to do." 434 F. 2d 1116, 1122 (1970).

ments [5] and that donations to the fund were not, in fact, necessary for employment or Union membership. The fund generally required contributors to sign authorization cards, which contained a statement that their donations were "voluntary . . . [and] no part of the dues or financial obligations of Local Union No. 562 . . . ," [6] and the testimony was overwhelming from both those who con-

[5] It also appears that the costs of administration of the fund, including the solicitation of contributions, were to some extent, though by no means entirely, similarly financed. See, *e. g.*, Appendix to Petitioners' Brief, at 17 (indictment apparently charging fund disbursements to pay for authorization cards, see n. 6, *infra*, and collection sheets); 95–96, 99, 513 (one-time fund employee continuing to assist in fund bookkeeping activities in evenings and on Saturdays while on Union welfare fund payroll); 107–111 (another employee assisting in fund bookkeeping and collection activities while on Union welfare fund payroll before becoming full-time fund employee); 154 *passim* (Union agent collecting contributions on Union time); 787 (Callanan never on Union and fund payrolls at same time).

[6] The authorization card read, Petitioners' Brief, at 21–22:

"VOLUNTARY CONTRIBUTION AGREEMENT

"I, the undersigned, of my own free will and accord, desire to make regular contributions to the Political, Education, Legislative, Charity and Defense Fund which has been established and will be maintained by persons who are members of Local Union No. 562.

"I, therefore, agree to hereafter contribute . . % per 8 hour day to said fund and authorize my contributions to be used and expended by those in charge of the fund, in their sole judgment and discretion, for political, educational, legislative, charity and defense purposes.

"I understand that contributions are voluntary on my part and that I may revoke this agreement by a written notice to that effect mailed to the fund or to persons in charge thereof. I also understand that my contributions are no part of the dues or financial obligations of Local Union No. 562 and that the Union has nothing whatsoever to do with this fund.

"Signed .....

"Date: .....

"Witness: ....."

tributed and those who did not, as well as from the collectors of contributions, that no specific pressure was exerted, and no reprisals were taken, to obtain donations.[7] Significantly, the Union's attorney who had advised in the organization of the fund testified on cross-examination that his advice had been that payments to the fund could not be made a condition of employment or Local 562 membership, but it was immaterial whether contributions appeared compulsory to those solicited.[8]

Under instructions to determine whether on this evidence the fund was in reality a Union fund or the con-

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[7] See Appendix to Petitioners' Brief, at 171–172; 189–190; 239–240, 244–245; 256, 259–260; 299, 311; 322–323; 347; 359–361, 363–365; 382–384; 404, 411; 446; 460; 481–483; 529; 541, 543; 554–555; 561–562; 566, 570–571; 572–573; 577–578; 581; 584–585; 593–594; 600–602, 606; 617; 633–634; 641; 653; 659; 663; 669; 685, 689; 694; 700–702; 705; 710; 715; 718; 723; 731; 752–753; 766; 835; 840; 845–847; 850; 854; 858; 860; 865–866; 869, 871; 872; 875; 877; 887; 889; 894; 902; 915; 919; 925; 930; 944, 947; 948; 953; 956; 962. The only contrary evidence was the testimony of William Copeland, *id.*, at 194–213, a non-562 member who was laid off from a job two days after refusing to contribute when the Union steward explained that everyone had to pay. A co-worker, however, who was also a non-562 member, but paid his contributions, was discharged at the same time, and although he was shortly thereafter put on another 562 job, Copeland did not return to the Union hiring hall for further work. Moreover, Copeland acknowledged on cross-examination that he had "strong feelings" against Local 562 not only because of the political fund but because of an earlier dismissal at another job involving a jurisdictional dispute between 562 and his own union.

[8] The cross-examination was as follows, *id.*, at 1067–1068:

"Q. Was it of any concern to you as to what the members who were being solicited thought about it, the atmosphere in which the solicitation was made, was that of any concern to you?

"A. None, because it made no difference as a matter of law and as a matter of procedure. I would have no way of knowing what assumptions people reach. I have no way of knowing what people

tributors' fund,[9] the jury found each defendant guilty. The jury also found specially that a willful violation of § 610 was not contemplated, and the trial court im-

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think. My concern is what was said, what was done, and how it was done.

"Q. Well, in your opinion to [the organizers of the fund] did you not make it clear that in no way should it appear compulsory to the members who were asked to contribute?

"A. No, sir, I did no such thing. I simply told them that the contributions must not be made a condition of employment or a condition of Union membership and that was the extent of my advice on what they must do, what they must not do, and how they should do it."

[9] The court's instructions in this regard were as follows (emphasis added):

"You will note that Section 610 prohibits contributions by labor organizations for use in connection with an election for a federal office. It does not prohibit any person from making or agreeing to make such contributions or setting up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization. That is, the statute is not violated unless the contribution is in fact and in the final analysis made by the labor organization.

"In this case evidence was offered by the Government to the effect that funds were contributed to or in behalf of candidates for federal office and that such funds were paid out upon checks drawn upon the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund. *It is necessary, therefore, that the evidence establish that the Pipefitters . . . Fund was in fact a union fund, that the money therein was union money, and that the real contributor to the candidates was the union. As to this issue, the defendants contend that the fund in question was a bona fide entity separate and apart from the union, established by the voluntary good faith act of members of the pipefitters Local 562 and others, from which contributions to candidates were made on behalf of the persons who created the fund and not on behalf*

posed sentence accordingly. The Union was fined $5,000, while the individual defendants were each sentenced to one year imprisonment and fined $1,000.

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of the union. On the other hand, the Government contends that the fund was a mere artifice or device set up by the defendants and others as a part of the alleged conspiracy to give the outward appearance of being an independent and separate entity but in fact constituting a part of union funds.

"In determining whether the Pipefitters Voluntary Fund was a bona fide fund, separate and distinct from the union or a mere artifice or device, you should take into consideration all the facts and circumstances in evidence, and in such consideration you may consider

"1. Whether or not payments to the fund were routinely made at regular intervals at job sites,

"2. Whether or not payments to the fund were routinely collected by union stewards, foremen, area foremen, general foremen, or other agents of the union,

"3. Whether or not the payment to the fund was determined by a formula based upon the amount of hours or overtime hours worked upon a job under the supervision of the union,

"4. Whether or not payments to the fund were at one rate for 562 members and at a different rate for members of other unions,

"5. Whether or not payments to the fund began, continued and terminated with employment on a job under the jurisdiction of the union,

"6. Whether or not monies of the fund were used to provide benefits to union members in their capacity as members,

"7. Whether or not payments to the fund by members of other unions were in lieu of payments to the union in the form of travel card dues in the amount of eight dollars per month,

"8. Whether or not monies of the fund were used in part to promote activities properly permitted to the union pursuant to Section 2.05 of its Constitution and by-laws,

"9. Whether or not payments to the fund were made by those affiliated with the union to the general exclusion of other classes of persons or organizations,

"10. Whether or not contributions to the fund were required as

On appeal to the Court of Appeals for the Eighth Circuit, petitioners contended that the indictment failed to allege, and the evidence was insufficient to sustain, a

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a condition of employment or continued employment or membership in Local 562,

"11. Whether or not the individuals who contributed to said fund signed a voluntary contribution agreement,

"12. Whether or not the contributions to said fund were made voluntarily or involuntarily,

"13. Whether or not the monies contributed to said fund were kept separate and distinct from the funds of Local 562,

"14. Whether or not some persons who worked under the jurisdiction of Local 562 did not contribute to said fund,

"15. Whether or not the monies of said fund were used in part to promote activities which were prohibited to Local 562 by its Constitution and By-Laws,

"16. Whether or not said fund was established and maintained pursuant to the advice of counsel,

"17. Whether or not the monies of said fund were reported to the Department of Labor on the LM-2 forms, which required the reporting of monies of Local 562,

"18. Whether or not expenditures from the fund were under the control of the union and its officers,

"19. Whether or not records used in the collection of the payments to the fund are similar to those employed from time to time by the union in the collection of its regular dues and assessments.

"If upon consideration of all the facts and circumstances in evidence you find that the contributions to the candidates for federal office for political purposes were in fact made out of union funds by the union, and that the individual defendants as officers of the union, willfully consented thereto, then you may take this fact into consideration together with other facts in evidence in determining whether there was a prior understanding or agreement so to do.

. . . . . .

"A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary Political, Educational, Legislative, Charity and Défense Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration,

conspiracy to violate § 610 and that § 610, on its face or as construed and applied, abridged their rights under the First, Fifth, Sixth, and Seventeenth Amendments and Art. I, § 2, of the Constitution. They argued further that the special finding by the jury that a willful violation of § 610 was not contemplated effectively resulted in acquittal, since such willfulness was an essential element of the conspiracy under 18 U. S. C. § 371. The Court of Appeals in a four-to-three *en banc* decision, 434 F. 2d 1127 (1970), adopted Judge Van Oosterhout's panel opinion rejecting each of these claims, *id.*, at 1116 (1970). The gist of the court's decision, insofar as pertinent here, was that the Pipefitters fund was a subterfuge through which the Union made political contributions of Union monies in violation of § 610, as demonstrated by the evidence that the fund regularly served Union purposes and that the donors to the fund contributed in the belief that their job security depended upon it. We granted certiorari. 402 U. S. 994 (1971).

After we heard oral argument, the President on February 7, 1972, signed into law the Federal Election Campaign Act of 1971, which in § 205 amends 18 U. S. C. § 610, see pp. 24–25, *infra*, effective April 7, 1972. See Federal Election Campaign Act of 1971, § 406, 86 Stat. 20. We, accordingly, requested the parties to file supplemental briefs addressing the impact of that amendment on this prosecution.[10] Hav-

along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money."

[10] The questions posed to the parties were:

"Does § 205 of the Federal Election Campaign Act of 1971 (P. L. 92–225) affect the decision in this case, and if so, with what result? More particularly, does § 205 effect a substantive change in 18

ing considered those briefs, we now hold that § 205 of the Federal Election Campaign Act merely codifies prior law with one possible exception pertinent to this case; that that change in the law, if in fact made, does not in any event require this prosecution to abate; but that the judgment below must, nevertheless, be reversed because of erroneous jury instructions.[11] This

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U. S. C. § 610 in any way material to this case, as, for example, by altering any of the attributes of permissible union political organizations, such as the method of organization or administration or the method of solicitation or collection of contributions? If so, must this prosecution abate under the doctrine of *United States* v. *The Schooner Peggy*, 1 Cranch 103, and its progeny? Or does the federal saving statute, 1 U. S. C. § 109, nullify any abatement of the prosecution? In answering the latter question, what effect should be given to *Hamm* v. *Rock Hill*, 379 U. S. 306?"

[11] Petitioners Callanan and Lawler died pending our decision. The judgment of conviction will therefore be vacated as to them with directions to the District Court to dismiss the indictment against them. *Durham* v. *United States*, 401 U. S. 481 (1971). The remaining petitioners press the argument, rejected by the Court of Appeals, that the special finding by the jury that a willful violation of § 610 was not contemplated amounted to an acquittal, since such willfulness was an essential element of the conspiracy under 18 U. S. C. § 371. The trial court apparently required a special finding to determine whether the substantive offense which petitioners were charged with conspiring to commit was a misdemeanor or a felony. See 18 U. S. C. § 610, pp. 1–2, *supra*. That, in turn, was relevant for imposing sentence under § 371. See n. 1, *supra*. Petitioners contend that § 371 punishes a conspiracy to commit a *malum prohibitum* such as § 610 only when the object of the conspiracy is known to have been unlawful, which, so the argument goes, the jury found not to have been the case here by virtue of its special finding. This argument is not persuasive. Petitioners not only failed to object to the trial court's requirement that the jury return a special finding as inconsistent with the general charge, but also failed to move for acquittal on the ground now offered once the special finding was returned. More important, even assuming *arguendo* the correctness of petitioners' premise that knowledge of the reach of § 610 was requisite for conviction, but see

disposition makes decision of the constitutional issues raised premature, and we therefore do not decide them. Cf. *United States* v. *Auto. Workers*, 352 U. S. 567 (1957); *United States* v. *C. I. O.*, 335 U. S. 106 (1948).

I

We begin with an analysis of § 610.

First. The parties are in agreement that § 610, despite its broad language, does not prohibit a labor organization from making, through the medium of a political fund organized by it, contributions or expenditures in connection with federal elections, so long as the monies expended are in some sense volunteered by those asked to contribute. Thus, the Government states in its brief, "Nor do we dispute [petitioners'] conclusion, following their review of the legislative history of Section 610, that

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Keegan v. *United States*, 325 U. S. 478, 506 (1945) (Stone, C. J., dissenting); see generally Developments in the Law—Criminal Conspiracy, 72 Harv. L. Rev. 920, 936–937 (1959), petitioners would still be entitled at best to a new trial, not acquittal. The trial court specifically instructed the jury:

"The crime charged in this case requires proof of specific intent before a defendant can be convicted. . . . *To establish specific intent the Government must prove that the defendant knowingly, willfully and purposely did an act which the law forbids.* . . .

"An act is done 'knowingly' if done voluntarily and with knowledge of the facts, and not because of mistake or inadvertence or other innocent reason.

"*An act is done 'willfully' if done voluntarily and purposely and with the specific intent to do that which the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.*

"An act is done 'unlawfully' if done contrary to law." Appendix to Petitioners' Brief, at 1110 (emphasis added). See also *id.*, at 1116 (instruction on good-faith belief in legality of object of conspiracy).

In view of this instruction the jury's special finding may well have been inconsistent with its general verdict, but that, we hold, could require only reversal, not acquittal.

a union could 'establish a political organization for the purpose of receiving ear-marked political monies directly from [voluntary contributions of] union members . . . .'" Brief for the United States, at 27 n. 7, quoting Petitioner's Brief, at 62. See also Brief for the United States, at 30. This construction of § 610 is clearly correct.[12]

The antecedents of § 610 have previously been traced in *United States* v. *Auto. Workers* and *United States* v. *C. I. O.*, *supra*. We need recall here only that the prohibition in § 313 of the Federal Corrupt Practices Act of 1925, 43 Stat. 1074, on contributions by corporations in connection with federal elections was extended to labor organizations in the War Labor Disputes Act of 1943, 57 Stat. 167, but only for the duration of the war. As

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[12] The dissent declines to accept this agremeent of the parties on the ground that the language of § 610 is so clear on its face that there is no warrant for turning to the legislative history of the provision. The contrary is plainly true: Section 610 wholly fails to specify what funds a labor organization is barred from contributing or expending in connection with a federal election. Moreover, as we shall shortly see, the dissent's "facial" interpretation of § 610 was expressly rejected by its proponents in 1947, both from concern that it would raise constitutional questions of invasion of First Amendment freedoms and in an effort to ensure enactment of the law. In addition, Congress has only recently in the Federal Election Campaign Act of 1971 decisively rejected that interpretation on the basis of the very legislative history found dispositive herein. See n. 20, *infra*. Congress in 1947 and again only a few months ago was able to come to this conclusion solely because of the facial ambiguity of the provision.

It is also worth noting that the dissent's own analysis reveals the necessity for resorting to the legislative history of the statute. The dissent, too, appreciates "the freedom of union members, as well as that of employees and stockholders of corporations, to make uncoerced political contributions." If that is so, it obviously becomes imperative to determine the contours of that freedom, which, in turn, requires investigation of the legislative history of § 610.

the Court noted in *C. I. O., supra,* at 115, "It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." The prohibition on contributions was then permanently enacted into law in § 304 of the Labor Management Relations Act of 1947, 61 Stat. 159, with the addition, however, of a proscription on "expenditures" and an extension of both prohibitions to payments in connection with federal primaries and political conventions as well as federal elections themselves. Yet neither prohibition applied to payments by union political funds in connection with federal elections so long as the funds were financed in some sense by the voluntary donations of the union membership. Union political funds had come to prominence in the 1944 and 1946 election campaigns and had been extensively studied by special committees of both the House and Senate. Against the backdrop of the committee findings and recommendations the Senate debates upon the reach of § 304 attached controlling significance to the voluntary source of financing of the funds. The unequivocal view of the proponents of § 304 was that the contributions and expenditures of voluntarily financed funds did not violate that provision.

The special committees investigating the 1944 and 1946 campaigns devoted particular attention to the activities of the Political Action Committee (PAC) of the Congress of Industrial Organizations (CIO) because they had stirred considerable public controversy. See H. R. Rep. No. 2093, 78th Cong., 2d Sess., 2–6 (1945); S. Rep. No. 101, 79th Cong., 1st Sess., 20–24, 57–59 (1945); H. R. Rep. No. 2739, 79th Cong., 2d Sess., 30–31 (1947). See

also S. Rep. No. 1, pt. 2, 80th Cong., 1st Sess., 34 (1947). The committee findings were that PAC had been established by the executive board of the CIO in July 1943; that it consisted of a national office and 14 regional offices advising and coordinating numerous State and local political action committees; that its connection to the CIO was close at every level of organization; that its program, adopted by the CIO convention in November 1943, had included the re-election of President Roosevelt and the election of a "progressive" Congress; that it had initially been financed by sizeable pledges from the treasuries of CIO international unions and that some of these funds had been expended in federal primaries; but that, following the nomination of President Roosevelt for re-election in July 1944, it was generally financed by $1 contributions knowingly and freely made by individual CIO members; and that these monies were used for political educational activities, including get-out-the-vote drives, but were not directly contributed to any candidate or political committee. Thus, PAC had limited its direct contributions in federal campaigns to primaries, to which the Act at the time expressly did not apply, and restricted its activities in the elections themselves to so-called "expenditures" rather than "contributions." The Senate Special Committee on Campaign Expenditures concluded in 1945 that, in these circumstances, there was "no clear-cut violation" by PAC of § 313 of the Corrupt Practices Act. S. Rep. No. 101, *supra*, at 23. Although there was agreement within the committee that § 313 should be extended to federal primaries and nominating conventions because of their importance in determining final election results, *id.*, at 81–82,[13] there was disagreement on whether

[13] See also H. R. Rep. No. 2093, 78th Cong., 2d Sess., 9 (1945); S. Rep. No. 1, pt. 2, 80th Cong., 1st Sess., 36 (1947). But see H. R. Rep. No. 2739, 79th Cong., 2d Sess., 46–47 (1947).

§ 313 should also be amended to proscribe "expenditures" in addition to "contributions." A majority believed that it should not be, in part because the amendment "would tend to limit the rights of freedom of speech, freedom of the press, and freedom of assembly as guaranteed by the Federal Constitution." *Id.*, at 83.[14] Senators Ball and Ferguson, who dissented from this conclusion, nevertheless, conceded that even as to "expenditures": "If the Political Action Committee had been organized on a voluntary basis and obtained its funds from voluntary individual contributions from the beginning, there could be no quarrel with its activities or program and in fact both are desirable in a democracy." *Id.*, at 24. The House Campaign Expenditures Committee in 1946, however, strongly urged the adoption of a prohibition on "expenditures" in terms condemning the activities of PAC without regard to the source of its funds.[15]

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[14] The Senate committee did recommend that the use of general union funds to finance the distribution of a political pamphlet in connection with a federal election be prosecuted as a test case to determine the scope of the term "contribution" in § 313. S. Rep. No. 101, 79th Cong., 1st Sess., 57–59 (1945).

[15] H. R. Rep. No. 2739, *supra*, n. 13, at 39–40, 43, 46. The House committee declared, for example, *id.*, at 43:

"The CIO Political Action Committee is a committee of the Congress of Industrial Organizations and, as such, under the Corrupt Practices Act, is likewise as a labor union prohibited [from] making any contribution in connection with any election at which a Representative to Congress is to be elected.

"The committee feels that whether or not the activities carried on by these organizations and the payment of salaries to men known as organizers or advisers who go into the congressional districts and actively assist in local campaign activities, and expenditures for radio time, newspaper advertising, printing and distribution of handbills and posters, and for transportation of voters, constitute violations of the letter of the Federal Corrupt Practices Act, they certainly constitute violations of the spirit and intent of the law

Then in 1947 Congress made permanent the application of § 313 of the Corrupt Practices Act to labor organizations and closed the loopholes that were thought to have been exploited in the 1944 and 1946 elections. These changes were embodied in § 304 of the labor bill introduced by Representative Hartley, which was adopted by the House and the conference committee with little apparent discussion or opposition.[16] The provision, however, provoked lengthy debate on the Senate floor when Senator Taft, sponsor of the Senate labor bill and one of the Senate conferees, sought to explain its import. That debate compellingly demonstrates that voluntarily financed union political funds were not believed to be prohibited by the broad wording of § 304. Thus, Senator Taft stated:

> "[I]t seems to me the conditions are exactly parallel, both as to corporations and labor organizations. [An association of manufacturers] receiving corporation funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if

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and the [Act] should be so amended as to clearly and distinctly set out that such activities are prohibited."

The Senate committee studying the 1946 campaign joined this recommendation, but without any reference to PAC. See S. Rep. No. 1, pt. 2, *supra*, n. 13, at 38–39. See also H. R. Rep. No. 2093, *supra*, n. 13, at 9, 10–11 (noting the controversy over the scope of the term "contribution" and expressing views seemingly sympathetic with prohibiting "expenditures").

[16] See H. R. Rep. No. 245, 80th Cong., 1st Sess., 46 (1947); 93 Cong. Rec. 3428, 3522–3523 (1947); H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 67–68 (1947). See also 93 Cong. Rec. 6389 (1947) (critical remarks of Representative Sabath following the conference committee report). The only statement offering a rationale for § 304 was made by Representative Robsion after the House had voted to override President Truman's veto of the Act. Robsion stressed that it was unfair to union members to allow the expenditure of union funds in support of candidates for federal office whom they opposed. See 93 Cong. Rec. 7492 (1947).

it got its fund from labor unions, would violate the law. *If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that.* If the National Association of Manufacturers, we will say, wanted to obtain individual contributions for a series of advertisements, and if it, itself, were not a corporation, then, just as in the case of PAC, it could take an active part in a political campaign." 93 Cong. Rec. 6439 (1947) (emphasis added).

In response to a question by Senator Magnuson whether unions would be prohibited from publishing a newspaper "favoring a candidate, mentioning his name, or endorsing him for public office," Taft continued:

"No; I do not think it means that. The union can issue a newspaper, and can charge the members for the newspaper, that is, the members who buy copies of the newspaper, and the union can put such matters in the newspaper if it wants to. The union can separate the payment of dues from the payment for a newspaper if its members are willing to do so, that is, if the members are willing to subscribe to that kind of a newspaper. I presume the members would be willing to do so. A union can publish such a newspaper, *or unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose.*" *Id.*, at 6440 (emphasis added).

When Magnuson rejoined that "all union members know that a part of their dues in these cases go for the publication of some labor [newspaper] organ," Taft concluded:

"Yes. How fair is it? We will assume that 60

percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute, without being asked to do so specifically, and without having a right to withdraw their payments, to the election of someone whom they do not favor? Assume the paper favors a Democratic candidate whom they oppose or a Republican candidate whom they oppose. Why should they be forced to contribute money for the election of someone to whose election they are opposed? *If they are asked to contribute directly to the support of a newspaper or to the support of a labor political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. But the prohibition is against labor unions using their members' dues for political purposes,* which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders." *Ibid.* (emphasis added). See also *id.*, at 6437, 6438.

Senator Taft's view that a union cannot violate § 610 by spending political funds volunteered by its members was consistent with the legislative history of the War Labor Disputes Act and an express interpretation given to that Act by the Attorney General in 1944.[17] His

[17] See Hearings before a Subcommittee of the House Committee on Labor on H. R. 804 and H. R. 1483, 78th Cong., 1st Sess., 117, 133 (1943) (statements of Congressman Landis, sponsor of the measure) ("Individual union members would not be prohibited from contributing." "If you have a membership of 500,000, and all the Democrats wanted to give a dollar apiece, and there were 300,000, that would be $300,000. . . . Your whole organization could give

view also reflected concern that a broader application of § 610 might raise constitutional questions of invasion of First Amendment freedoms, and he wished particularly to reassure colleagues who had reservations on that score and whose votes were necessary to override a predictable presidential veto, see 93 Cong. Rec. 7485 (1947), of the Labor Management Relations Act.[18] We conclude accordingly that his view of the limited reach of § 610, entitled in any event to great weight, is in this instance controlling. Cf. *Newspaper Pub. Assn.* v. *NLRB*, 345 U. S.

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as high as that if they donated only a dollar apiece."); letter from Attorney General Biddle to Senator E. H. Moore (Sept. 23, 1944) (emphasis added), reproduced in Department of Justice Press Release, Sept. 25, 1944, and noted in 4 Law. Guild Rev. No. 5, at 49 (1944):

"You also point out [the Attorney General wrote] that committees composed of members of unions are engaged in the solicitation of funds from individual union members and you assert that committees of this kind 'are as much a labor organization as a union organization itself.' This contention is inconsistent with the provisions of the statute. In amending section 313 of the Corrupt Practices Act, the [War Labor Disputes Act] provided that for the purposes of the amendment the words 'labor organization' should have the same meaning they have under the National Labor Relations Act. . . . I think it clear that committees of the kind that you describe are not labor organizations within the meaning of this definition and they would not be recognized as bargaining agencies by the National Labor Relations Board. *Even if it were true that these committees were identical with the labor organizations to which their members belong—which I believe not to be the fact—there would still be no violation of law because the statute applies to contributions made by labor organizations and in this case the contributions are made by individuals and not by the committees.*"

[18] See, *e. g.*, 93 Cong. Rec. 6448, 6522–6523 (1947) (exchange between Senator Pepper, who, in opposing § 304, decried it as Republican legislation in contravention of the First Amendment, and Senator Ellender, who rose, as a Democratic representative on the conference committee, in support of Senator Taft's construction). See also *United States* v. *C. I. O.*, 335 U. S. 106, 120 (1948).

100, 106–111 (1953); *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 392 n. 15 (1951). We therefore hold that § 610 does not apply to union contributions and expenditures from political funds financed in some sense by the voluntary donations of employees. Cf. *United States* v. *Auto. Workers*, 352 U. S. 567, 592 (1957); *United States* v. *C. I. O.*, 335 U. S. 106, 123 (1948).

Section 205 of the Federal Election Campaign Act confirms this conclusion by adding at the end of § 610 the following paragraph:

> "*As used in this section, the phrase 'contribution or expenditure'* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but *shall not include* communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; *the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: Provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimina-*

tion, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction." 86 Stat. 10 (emphasis added).

This amendment stemmed from a proposal offered by Representative Hansen on the House floor, see 117 Cong. Rec. H 11476, to which the Senate acquiesced in conference. See *id.*, at H 12474 (joint conference committee report). Hansen stated that the purpose of his proposal was, with one exception not pertinent here,[19] "to codify court decisions interpreting [and the legislative history explicating] section 610 . . . and to spell out in more detail what a labor union or corporation can or cannot do in connection with a Federal election."[20] Moreover, there was substantial agreement among his colleagues that the effect of his amendment was, in fact, mere codification and clarification,[21] and even those who disagreed did not dispute that voluntarily financed union political funds are permissible. Indeed, Representative Crane, who led the opposition to the Hansen amendment,[22] had himself written the House committee provision for which the Hansen amendment was, in effect, sub-

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[19] The exception involved whether nonpartisan registration and get-out-the-vote campaigns could be directed to the public at large. See 117 Cong. Rec. H 11477, H 11478, H 11488.

[20] *Id.*, at H 11477. See also 118 *id.*, at H 94. In determining that § 610 has always permitted unions to organize voluntarily financed political funds, Hansen relied, as we have done, on Senator Taft's floor explanation of § 304 of the Hartley bill. See 117 *id.*, at H 11478; 118 *id.*, at H 94, H 95.

[21] See, *e. g.*, 117 *id.*, at H 11479 (remarks of Representative Hays), H 11481–H 11482 (remarks of Representative Thompson), H 11486 (remarks of Representatives Steiger and Gude).

[22] See, *e. g.*, 117 *id.*, at H 11480, H 11483–H 11484, H 11488; 118 *id.*, at H 88–H 89.

stituted.[23] Mr. Crane's provision, like the Hansen amendment, was said in some measure to codify existing law,[24] and would also have specifically authorized voluntary funds.[25] This consensus that has now been captured in

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[23] The Hansen proposal was offered as an amendment to an amendment in the nature of a substitute to the bill as reported out of committee. Although the substitute amendment had no provision relating to § 610, see 117 *id.*, at H 11463, it was expected that the Crane provision would be taken up as an amendment to the substitute amendment if the Hansen amendment failed to carry. See, *e. g.*, *id.*, at H 11487–H 11488 (remarks of Representatives Devine and Crane).

[24] See, *e. g.*, *id.*, at H 11487 (remarks of Representative Devine).

[25] The Crane provision would have added the following paragraph at the end of § 610:

"As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift, of money, or any services, or anything of value to any candidate, compaign [*sic*] committee, or political party or organization, in connection with any election to any of the offices referred to in this section, including any expenditure in connection with get-out-the-vote activities. *Nothing in this section shall preclude an organization from establishing and administering a separate contributory fund for any political purpose, including voter registration or get-out-the-vote drives, if all contributions, gifts, or payments to such fund are made freely and voluntarily, and are unrelated to dues, fees, or other moneys required as a condition of membership in such organization or as a condition of employment.*" H. R. Rep. No. 92–564, 92d Cong., 1st Sess., 19 (1971) (emphasis different).

The principal bone of contention between the proponents and opponents of the Hansen amendment when it was first introduced was on whether union or corporation treasuries could and should be available to finance get-out-the-vote drives. Representative Frenzel, for example, summarized the debate shortly before the House vote on the Hansen amendment was taken, 117 Cong. Rec. H 11488:

"[I]t is important that we understand neither the Crane amendment nor the Hansen amendment is directed toward voluntary or COPE [the successor of PAC] moneys. What we are talking about is Treasury money. The principal distinction is that the Hansen

express terms in § 610 cannot, of course, by itself conclusively establish what Congress had in mind in 1947. But it does "'throw a cross light'" on the earlier enactment that, together with the latter's legislative history, demonstrates beyond doubt the correctness of the parties' common ground of interpretation of § 610. *Michigan Nat. Bank* v. *Michigan*, 365 U. S. 467, 481 (1961) (quoting L. Hand, J.). Cf. *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U. S. 175, 194 (1967); *NLRB* v. *Drivers Local Union*, 362 U. S. 274, 291–292 (1960).

Second. Where the litigants part company is in defining precisely when political contributions and expenditures by a union political fund fall outside the ambit of § 610. The Government maintains, first, that a valid fund may not be the alter ego of the sponsoring union in the sense of being dominated by it and serving its purposes, regardless of the fund's source of financing:

> "Section 610 was violated [the Government explains] if in fact the [Pipefitters] Fund was merely a subterfuge through which the union itself made proscribed political contributions, irrespective of whether the moneys so contributed were voluntarily given to the Fund by the contributors. . . . [T]he evidence that the payments were voluntary [was only a factor relevant] in determining if it was the union or the Fund as a separate entity that made the political contributions in question . . . ." Brief for the United States in Opposition to the Petition

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amendment would allow its use to get-out-the-vote drives for union members while the Crane amendment would not."

Following the conference committee report, Crane rose once again in opposition to the Hansen amendment, this time and for the first time criticizing the amendment in its treatment of union political funds. The dispute centered then, however, not on whether voluntary funds were permissible, but on exactly what their prerequisites were. See pp. 36–40, *infra*.

for Certiorari, at 7. See also Brief for the United States, at 24.

The requirement that the fund be separate from the sponsoring union eliminates, in the Government's view, "the corroding effect of money employed in elections by aggregated power," *United States* v. *Auto. Workers*, 352 U. S. 567, 582 (1957), which this Court has found to be one of the dual purposes underlying § 610. See *id., passim; United States* v. *C. I. O.*, 335 U. S. 106, 113, 115 (1948). The Government urges, secondly, that in accordance with the legislative intent to protect minority interests from overbearing union leadership, which we have found to be the other purpose of § 610, see *ibid.*, the fund may not be financed by monies actually required for employment or union membership *or* by payments that are effectively assessed, that is, solicited in circumstances inherently coercive.[26] Petitioners, on the other hand, contend that, to be valid, a political fund need not be distinct from the sponsoring union, and further that § 610 permits the union to exercise institutional pressure, much as recognized charities do, in soliciting donations. See Petitioners' Brief, at 71, 73 n. 22.

We think that neither side fully accurately portrays the attributes of legitimate political funds. We hold that such a fund must be separate from the sponsoring union only in the sense that there must be a strict segre-

[26] "A union member [the Government explains] may find irresistible the union's demand—through its steward on the jobsite—for contributions fixed as a regular percentage of days worked and money earned. Section 610 reduces this institutional pressure by forbidding the unions from making direct political contributions from money that is effectively assessed." Brief for the United States, at 38. As we shall see, *infra*, at pp. 49–56, the Government's theory in prosecuting this case focused on the first, but not the second of its arguments here presented.

gation of its monies from union dues and assessments.[27] We hold, too, that, although solicitation by union officials is permissible, such solicitation must be conducted under circumstances plainly indicating that donations are for a political purpose and that those solicited may decline to contribute without loss of job, union membership, or any other reprisal within the union's institutional power. Thus, we agree with the second half of the Government's position, but reject the first.

As Senator Taft's remarks quoted above indicate, *supra*, pp. 20–22, the test of voluntariness under § 610 focuses on whether the contributions solicited for political use are knowing free-choice donations. The dominant concern in requiring that contributions be voluntary was, after all, to protect the dissenting stockholder or union member. Whether the solicitation scheme is designed to inform the individual solicited of the political nature of the fund and his freedom to refuse support is, therefore, determinative.

Nowhere, however, has Congress required that the political organization be formally or functionally independent of union control or that union officials be barred from soliciting contributions or even precluded from determining how the monies raised will be spent. The Government's argument to the contrary in the first half of its position is based on a misunderstanding of the purposes of § 610.[28] When Congress pro-

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[27] For the scope of the required segregation of funds, see pp. 42–46, *infra*.

[28] The Government relies on *United States* v. *Lewis Food Co.*, 366 F. 2d 710 (1966), where the Court of Appeals for the Ninth Circuit upheld an indictment under § 610 that failed to allege, *inter alia*, that an expenditure by a corporation in connection with a federal election was made against the wishes of an individual stockholder. The court there explained, *id.*, at 713–714:

"The statute itself . . . does not provide an exception when stock-

hibited labor organizations from making contributions or expenditures in connection with federal elections, it was, of course, concerned not only to protect

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holders consent. We are of the opinion that Congress intended to insure against officers proceeding in such matters without obtaining the consent of shareholders by forbidding all such expenditures.

"The Supreme Court stated that the other legislative motivation [in addition to the protection of minority interests] for enactment of legislation such as section 610 was the necessity for destroying the influence over elections which corporations exercised through financial contributions. [*United States* v. *C. I. O.*, 335 U. S., at 113.] This consideration would be meaningless if a corporation could make expenditures for activities otherwise forbidden by section 610 by simply obtaining unanimous consent of its stockholders. In the *Auto Workers* case, the indictment contained no allegation that the expenditure of union funds [to finance television broadcasts designed to influence the electorate at large] was contrary to the wish of members. Nevertheless, the Supreme Court found the indictment sufficient."

The Ninth Circuit's reliance on *Auto. Workers* was misplaced. The indictment there did allege, as we noted, 352 U. S., at 584, "'that the fund used came from the Union's dues, was not obtained by voluntary political contributions or subscriptions from members of the Union, and was not paid for by advertising or sales.'" In *Auto. Workers*, therefore, we had no occasion to address the legitimacy of union-controlled political contributions financed from the knowing free-choice donations of union members. More important, the court in *Lewis* labored under the same misapprehension on which the Government's argument rests here—namely, that the legislative purpose to eliminate the effects of aggregated wealth on federal elections reaches union- or corporation-controlled contributions and expenditures financed not from the general treasury, but from voluntary donations.

By saying this, we do not mean to suggest that the result in *Lewis* was incorrect. To the contrary, an indictment that alleges a contribution or expenditure from the general treasury of a union or corporation in connection with a federal election states an offense. See nn. 47 and 48, *infra*. The unanimous vote of the union members or stockholders may at most (but we need not now decide) be a defense.

minority interests within the union but to eliminate the effect of aggregated wealth on federal elections. But the aggregated wealth it plainly had in mind was the general union treasury—not the funds donated by union members of their own free and knowing choice. Again, Senator Taft adamantly maintained that labor organizations were not prohibited from expending those monies in connection with federal elections. Indeed, Taft clearly espoused the union political organization merely as an alternative to permissible direct political action by the union itself through publications endorsing candidates in federal elections. The only conditions for that kind of direct electioneering were that the costs of publication be financed through individual subscriptions rather than through union dues and that the newspapers be recognized by the subscribers as political organs that they could refuse to purchase.[29] Neither the absence of even a formally separate organization, the solicitation of subscriptions by the union, nor the method for choosing the candidates to be supported was mentioned as being material. Similarly, the only requirements for permissible political organizations were that they be funded through separate contributions and that they be recognized by the donors as political organizations to which they could refuse support. As Taft said, "If the labor people should desire to set up a political organization

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[29] In *United States* v. *C. I. O.*, this Court, of course, went further than Senator Taft's comments would allow by holding that § 304 did not bar a union from using union funds to publish a periodical, in regular course and for distribution to those accustomed to receiving it, that urged union members to vote for a candidate for Congress. The Court, however, arrived at that construction because the contrary interpretation would create "the gravest doubt" of the statute's constitutionality. 335 U. S., at 121.

and obtain direct contributions for it, there would be nothing unlawful in that," "just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose." P. 21, *supra*.

The operations of PAC, the organization that dominated the congressional investigations of the 1944 and 1946 campaigns and that was expressly approved by the 80th Congress, are especially instructive in this regard. Significantly, it was exactly the knowing free-choice donation test of voluntariness that PAC sought scrupulously to observe in soliciting contributions. Sidney Hillman, Chairman of PAC, testified before the House Campaign Expenditures Committee in 1944:

> "[W]e have utilized every avenue to tell the people not to become overenthusiastic about collections. We want this contribution on a voluntary basis and would rather have no contribution than to have any taint of coercion or even any interference. We do not want any money except from those who want to see the reelection of Roosevelt." [30]

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[30] Hearings before the Committee to Investigate Campaign Expenditures on H. Res. 511, 78th Cong., 2d Sess., 79 (1944). See also *id.*, at 16–17. PAC's method of collection of contributions appears, in large measure, to have been true to Hillman's words, since both its political and voluntary nature were well known. See *id.*, at 51, 76–79, 712–713, 728–729, 800–801, 822–823, 844–845, 851, 864–866, 871, 880, 885–886, 921–925, 928, 935–936, 941, 946, 962, 964, 988, 999, 1017, 1021–1031, 1033–1038, 1041. In some instances complaints were lodged that pressure had been exercised in obtaining donations, and the House committee noted in its report that in California some PAC monies were taken directly from union treasuries and "that at least one local union . . . upon vote by its entire membership levied an assessment of 25 cents per month upon each member . . . ." H. R. Rep. No. 2093, *supra*, n. 13, at 6. This, nevertheless, was recognized as as exception "from the general national plan" following Roosevelt's nomination for re-election, under which PAC was generally financed

PAC was, nevertheless, generally regarded not as a functionally separate organization (except for its method of financing[31]), but as an instrumentality of the CIO, itself subsumed within the definition of "labor organization."[32] It was, as we have seen, established by

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by individual contributions "largely . . . taken by shop stewards outside working hours." *Id.*, at 5. Indeed, the amount of individual contributions actually collected by PAC evidences that it successfully informed CIO members that donations were not mandatory assessments. Cf. L. Overacker, Presidential Campaign Funds 61 (1946). From an estimated CIO membership of five million PAC might have collected $5 million at the requested rate of $1 a member. Yet the national PAC office, which received 50¢ of each $1 donated, obtained only $376,910.77 in 1944, S. Rep. No. 101, *supra*, n. 14, at 23, suggesting contributions by less than 800,000 CIO members. See also H. R. Rep. No. 2739, *supra*, n. 13, at 31 ($218,415.98 received in 1946).

[31] See pp. 42–44, *infra*.

[32] Indeed, in a letter to regional PAC directors, the national PAC office itself referred to the organization "as an instrumentality of the Congress of Industrial Organizations." S. Rep. No. 101, *supra*, n. 14, at 22. See also Hearing before the Special Committee to Investigate Presidential, Vice-Presidential, and Senatorial Campaign Expenditures on S. Res. 263, 78th Cong., 2d Sess., 19 (1944) (testimony of Sidney Hillman) ("We just speak and act for the C. I. O. organizations."); House Hearings, *supra*, n. 30, at 839–840 (testimony of state PAC president) (local PAC is agent of union local). It is true that Senator Taft stated at one point in the Senate debates that "[t]he PAC is a *separate* organization which raises its own funds for political purposes, and does so perfectly properly." 93 Cong. Rec. 6437 (1947) (emphasis added). But if meant to indicate anything more than that PAC had a separate *formal* identity from the CIO, this isolated statement was clearly inconsistent with well-known facts about the organization. Moreover, neither Taft nor any of his colleagues appears to have attached any particular significance to the statement. Nor can we in view of Taft's endorsement of direct union electioneering through political newspapers paid for through subscriptions. See pp. 21–22, 31, *supra*. It is also true that the Attorney General in his letter to Senator Moore in 1944 opined that committees like PAC were not "labor organizations"

the executive board of the CIO, its program was adopted at the national CIO convention, and its relationship to the CIO was close at every level of organization.[33] Furthermore, union agents generally collected contributions, H. R. Rep. No. 2093, 78th Cong., 2d Sess., 5 (1945), and the union leadership was instrumental in choosing candidates to be supported.[34] Thus,

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within the meaning of the War Labor Disputes Act inasmuch as they were not bargaining agencies. See n. 17, *supra*. But the Senate campaign expenditures committee implicitly in 1945 and the House committee expressly in 1946 rejected that conclusion. See S. Rep. No. 101, *supra*, at 23; H. R. Rep. No. 2739, *supra*, n. 13, at 43 (quoted in n. 15, *supra*). See also House Hearings, *supra*, n. 30, at 27 (whether PAC was a "labor organization" "highly debatable" in opinion of PAC counsel).

[33] The House committee observed in its 1945 report, H. R. Rep. No. 2093, *supra*, n. 13, at 5:

"The relationship between the Political Action Committee and the Congress of Industrial Organizations is . . . close on every level of organization. Mr. Hillman is president of the Amalgamated Clothing Workers of America, as well as chairman of the Political Action Committee. The State political action committees typically utilize the existing mechanism of the Congress of Industrial Organizations State councils; and the local political action committees are similarly set up as committees of the Congress of Industrial Organizations locals."

[34] The national PAC organization did not endorse senatorial, congressional, State, or local candidates, but gave advice to State and local political action committees in that regard. The national organization did endorse President Roosevelt on May 17, 1944, when, in the words of Sidney Hillman, "substantially all of the C. I. O. international unions and the great majority of its State councils had already acted . . . ." House Hearings, *supra*, n. 30, at 8. The national organization also endorsed Vice President Truman. Candidates for Congress were apparently chosen for endorsement by State or local PAC committees composed of representatives of the international CIO unions after review of incumbents' voting records in consultation with the regional PAC offices. See S. Rep. No. 101, *supra*, n. 14, at 21; Senate Hearings, *supra*, n. 32, at 12–13, 20–22; House Hearings, *supra*, at 8, 39–41, 43–46, 709–712, 714–715, 725–728, 842–845,

far from being a separate organization sprouting from the desires of the rank and file to engage in political action, PAC, the paragon union political fund, was a medium for organized labor, conceived and administered by union officials, to pursue through the political forum the goals of the working man.[35] And the only prerequisite for its continued operation after enactment of § 304 of the Labor Management Relations Act was that it be strictly financed by solicitations designed to result in knowing free-choice donations.

This conclusion, too, we find confirmed by § 205 of the Federal Election Campaign Act, pp. 24–25, *supra*. That provision expressly authorizes "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization . . . ." The provision then states in a proviso clause that "it shall be unlawful for such a fund to make a contribution or

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896–898, 904, 906–908, 942–944, 949–950, 954–960, 977–979, 983–985, 993–995, 1001, 1003, 1006–1007. PAC's endorsement procedures were described in 1951 as follows: The chairman of the local political action committee, who was usually the union president, would consult with a prospective candidate together with a screening committee. If that committee acted favorably, the candidate would then be presented to the political action committee for a vote on formal endorsement. Any endorsement would then be reported to the constituent unions of the area PAC and to the state and national PAC offices, and activity in support of the candidate would get underway. J. Kroll, The CIO–PAC and how it works, in The House of Labor 120, 122–123 (J. Hardman and M. Neufeld, eds. 1951).

[35] Accord, Overacker, *supra*, n. 30, at 61–62:

"Although the political action committee of the CIO was separately organized, and in most cases its separate identity was scrupulously preserved, it is hard to escape the conclusion that it was the *alter ego* of the organization which inspired it. The circumstances under which it came into being, the 'interlocking of directorates' at the top, and the close cooperation at the local level all point in that direction."

expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment . . . ." Thus, § 205 plainly permits union officials to establish, administer, and solicit contributions for a political fund. The conditions for that activity are that the fund be "separate" and "segregated" and that its contributions and expenditures not be financed through physical force, job discrimination, or financial reprisal or the "threat" thereof or through "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment." The quoted language is admittedly subject to contrary interpretations. "Separate" could (and normally when juxtaposed to "segregated" would) be read to mean an apartness beyond "segregated"; "threat" could be construed as referring only to the expression of an actual intention to inflict injury; and "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment" could be interpreted to mean only actual dues or assessments. But we think that the legislative history of § 205 establishes that "separate" is synonymous with "segregated"; that "threat" includes the creation of an appearance of an intent to inflict injury even without a design to carry it out; and that "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment" includes contributions effectively assessed even if not actually required for employment or union membership.

The Hansen amendment was an alternative to Repre-

sentative Crane's proposal, which declared in relevant part, n. 25, *supra:*

> "Nothing in this section shall preclude an organization from establishing and administering a *separate* contributory fund for any political purpose . . . , if all contributions, gifts, or payments to such fund are made *freely and voluntarily,* and are unrelated to dues, fees, or other moneys required as a condition of membership in such organization or as a condition of employment." (Emphasis added.)

The debate on the differences between the Crane and Hansen provisions did not involve this language when the Hansen amendment was first introduced and adopted by the House. See *ibid.* At that point Hansen merely indicated in general explanation of his amendment that a permissible fund had to be "separate," which in context clearly meant "segregated," see 117 Cong. Rec. H 11477,[36] and that, although the law could not "control the mental reaction" of a union member solicited by his union chief, *id.*, at H 11478,[37] the monies obtained

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[36] "This fund [Hansen stated] must be *separate* from any union or corporate funds, and contributions must be voluntary. To insure that contributions are voluntary, the amendment prohibits the use by the *separate* political fund of any money or anything of value obtained by the use or threat of force, job discrimination, or financial reprisal, or by dues or fees, or other monies required as a condition of employment or membership in a labor organization . . . ." (Emphasis added.)

[37] "The essential prerequisite [Hansen said] for the validity of such political funds is that the contributions to them be voluntary. For that reason the final section of this amendment makes it a violation of section 610 to use physical force, job discrimination, financial reprisals or the threat thereof, in seeking contributions. This is intended to insure that a solicitor for COPE or BIPAC [union political funds] cannot abuse his organizational authority in seeking political contributions. Of course, nothing can completely

had to come "in a truly voluntary manner and without the employment of the kinds of threats or reprisals or other methods that are prohibited by this amendment." *Id.*, at H 11479. Thus interpreted, the Hansen amendment in its author's view served the traditional purposes of § 610:

> "[T]he underlying theory of section 610 [Hansen explained] is that substantial general purpose treasuries should not be diverted to political purposes, both because of the effect on the political process of such aggregated wealth and out of concern for the dissenting member or stockholder. Obviously, neither of these considerations cuts against allowing voluntary political funds. For no one who objects to the organization's politics has to lend his support, and the money collected is that intended by those who contribute to be used for political purposes and not money diverted from another source." *Id.*, at H 11478.

No one at this time disputed that the Crane and Hansen provisions were the same in these respects in codifying prior law.

After the conference committee had adopted the Hansen amendment, however, Crane inserted in the record a *Wall Street Journal* article suggesting that the Hansen amendment had been inspired by the AFL–CIO to overrule the Court of Appeals decision in this case by authorizing a union political fund even if it is not separate

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erase some residual effects on this score, any more than the law can control the mental reaction of a businessman asked for a contribution by an individual who happens to be his banker, or of a farmer approached by the head of his local farm organization. The proper approach, and the one adopted here, is to provide the strong assurance that a refusal to contribute will not lead to reprisals and to leave the rest to the independence and good sense of each individual."

and distinct from the sponsoring union and by altering the test of voluntariness to focus on the absence of force rather than on the contributor's intent to make a donation of his own free and knowing choice. See 118 *id.*, at H 88–H 89.[38] Crane did not significantly elaborate on the article or specifically endorse each of the particular points it made.

Hansen rejoined that he "[stood] fully behind every word of the statement" he had made during the earlier debate on his amendment and "[repeated] . . . that the purpose and effect of my amendment is [*sic*] to codify and clarify the existing law and not to make any substantive changes in the law." *Id.*, at H 94.[39] He stated further that his "amendment is consistent with the position taken by the Justice Department in the brief it filed with the U. S. Supreme Court in the Pipefitter case [which charged that the contributions to the Pipefitters fund "were assessed by the union as part of its dues structure"] . . . ," since his amendment prohibited financing

[38] In particular, the article quoted "a man at the Justice Department" as saying that "'[t]he (Hansen) provision . . . not only doesn't codify existing law, but it overrules existing law'"; stated that Hansen had "[ignored the Court of Appeals decision in this case] that holds that labor can raise campaign cash only through voluntary funds that are 'separate and distinct' from the sponsoring union"; asserted that under the Hansen amendment "union chiefs . . . wouldn't be required to tell members for what purpose the money [solicited] is going"; and quoted an Associate Deputy Attorney General as reporting the Government's position to be "'that a contribution to a political fund [must] be not only "voluntary," in the sense of an absence of force, but also knowingly made.'"

[39] At this point Representative Hays, a supporter of the Hansen amendment, interjected, 118 Cong. Rec. H 94:

"I will say to the gentleman that what he is saying will be the legitimate legislative history and that what somebody down in the Department of Justice, some Assistant Attorney General's opinion [see n. 38, *supra*], is worth exactly as much as the piece of paper it is printed on, no more and no less."

political funds through monies required for employment or union membership. His amendment, therefore, would not have the effect of "thwarting" that prosecution. *Id.*, at H 94, H 95 (emphasis omitted). Hansen stated, too, that his "amendment is also consistent with the provisions of the so-called Crane amendment dealing with the legality of a separate, voluntary political fund." *Id.*, at H 94. The only difference he appears to have seen between his amendment and the text of the Crane provision quoted above was that the one made explicit what the other treated implicitly. Hansen explained:

> "[A]s Senator DOMINICK stated, speaking in support of an amendment to section 610 he offered to the other body, the general view is that:
>
> "'If a member wishes to pay money voluntarily to a candidate or to a labor organization fund for a candidate or even to a fund which the union will determine how it is to be spent, I have no objections.' [117 Cong. Rec. S. 13153.[40]]
>
> "The Hansen amendment building on this consensus tracks this language with a single addition making explicit what is implicit in the Crane amendment—that unions and corporations may solicit contributions to these funds as long as they do so without attempting to secure money through 'physical force, job discrimination, financial reprisals' or the threat thereof. Thus the Hansen amendment does not break new ground, it merely writes currently accepted practices into clear and explicit statutory language." *Id.*, at H 95.

Crane made no reply to these assertions.

We conclude from this legislative history that the term "separate" in the Hansen amendment is synony-

[40] See also 117 *id.*, at H 11478 (Hansen quoting approvingly same statement by Senator Dominick).

mous with "segregated." Nothing in the legislative history indicates that the word is to be understood in any other way. To the contrary, Hansen's comments in general explanation of his amendment support that interpretation, as does the use of the term in the Crane provision, with which, Hansen said, his amendment was consistent. Moreover, Hansen did not deny that his amendment departed from the Court of Appeals insistence in the *Pipefitters* decision that a permissible political fund be separate and distinct from the sponsoring union; instead, he merely found his amendment consistent with the Government's argument before this Court that political contributions and expenditures cannot be made from dues or assessments. Finally, both the Crane and Hansen amendments expressly authorize unions to establish and administer voluntary political funds. The Hansen amendment also expressly authorizes union officials to solicit contributions and, as the quoted statement of Senator Dominick indicates, further permits them to determine the disposition of the monies raised. In these circumstances it is difficult to conceive how a valid political fund can be meaningfully "separate" from the sponsoring union in any way other than "segregated."

Similarly, we conclude that the term "threat" and the phrase "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment" must be read broadly to encompass solicitation schemes that do not make plain the political nature of the union fund and the freedom of the individual solicited to refuse to contribute without reprisal. The term and the phrase, in other words, include apparent as well as actual threats and dues or assessments respectively. Again, Hansen's explanatory statements are all consistent with that interpretation. Even his observation that the law cannot "control the mental reaction" of a union member approached by a

union official seems better taken simply as justification for allowing solicitation by union officials at all rather than as condoning the use of tacit force or pressure. Moreover, if the Hansen amendment is to be construed, as Hansen indicated it should be, *in pari materia* with the Crane provision, it, too, must require that donations be made "freely and voluntarily." Likewise, if the amendment is meant, as Hansen said it was, to embrace the Government's position in this case, we merely implement his purpose by interpreting "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment" as including not only actual but effective dues or assessments.

Construed as we have done, § 205 of the Federal Election Campaign Act does nothing more than accomplish the expressed purpose of its author—that is, codify and clarify prior law. But since we have arrived at our interpretation without reference to prior law, § 205 once again throws on § 610 as embodied in § 304 of the Labor Management Relations Act "'a cross light'" that confirms our understanding of the law applicable to this prosecution.

Third. Arguably, however, there is one change effected by § 205 material to this case, and that is with regard to the *use* of general union monies for the establishment, administration, and solicitation of contributions for political funds. Section 304 of the Labor Management Relations Act may be interpreted to prohibit such use, while the Hansen amendment plainly permits it.

As we have seen, p. 18, *supra,* PAC was initially financed from general union treasuries. After the nomination of President Roosevelt for re-election, however, the costs of administration of PAC as well as its political expenditures were mainly, although not entirely, financed from a segregated account of voluntary individual donations. The House campaign expenditures committee

explained in its 1945 report, H. R. Rep. No. 2093, 78th Cong. 2d Sess., 5 (1945):

> "[I]t is not . . . possible completely to separate the resources and facilities made available to the Political Action Committee even after July 23, 1944 [when Roosevelt became a candidate for re-election], from those of the Congress of Industrial Organizations and its unions. On the national level and in most States that separation appears to have been preserved so far as cash income and cash expenditures for strictly Political Action Committee as distinguished from union activities are concerned. The local distribution of Political Action Committee literature, for example, has been largely handled by volunteers on their own time; and the contributions have largely been taken by shop stewards outside working hours. But no such separation has proved possible where the use of union offices [41] and office personnel is concerned. Union personnel assigned to full-time Political Action Committee work have typically been transferred from the union to the Political Action Committee pay roll. But the part time Political Action Committee services of persons who are both union and Political Action Committee officers cannot be thus readily segregated."

In endorsing PAC in the enactment of § 304 of the Labor Management Relations Act, Congress clearly had in mind PAC's financial structure after July 1944.

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[41] Compare Senate Hearing, *supra*, n. 32, at 41 (regional PAC offices, to Sidney Hillman's knowledge, separate from CIO offices, as "we don't like them to mix their union business with political activities"), and House Hearings, *supra*, n. 30, at 717, 901 (testimony of regional PAC directors) (regional office financed from national PAC headquarters), with House Hearings, *id.*, at 717–718, 736, 841, 857–861, 867–868, 872 (overlapping use of offices on state and local level).

Congress, therefore, may have considered that PAC's activities in the future could be financed only from voluntary donations separate from union dues and assessments, except for incidental expenses such as office space and part-time personnel. Alternatively, in view of the emphasis on protecting minority union interests and maintaining a strict segregation of funds, Congress may have thought that all of PAC's activities, including the costs of administration and solicitation of contributions, had to be paid for exclusively from voluntary contributions. The evidence is strong at least that Congress believed the costs of organization of new union political funds had to be financed in that way. See, *e. g.*, S. Rep. No. 101, 79th Cong., 1st Sess., 24 (1945) (statement by Senators Ball and Ferguson, quoted, p. 19, *supra*).

In contrast, the Hansen amendment provides that "it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured" in a prohibited way. Conceivably this language could be read to forbid making contributions or expenditures through the establishment or administration of a political fund or through the solicitation of donations financed by general union monies. But that is neither the plain meaning nor, as the legislative history of § 205 shows, the intended construction of the provision. When the Hansen amendment was first introduced, its sponsor explained:

> "As a further safeguard [against the use of a compulsory fund for political purposes] the proviso also makes it a violation for such a fund to make a contribution or expenditure from money collected as dues or other fees required as a condition of membership or employment or obtained through commercial transactions. This insures that any money, service, or tangible item—such as a typewriter, Xerox machine, and so forth—provided to

> a candidate by such a fund must be financed by the voluntary political donations it has collected." 117 Cong. Rec. H 11478–H 11479.

At no point in the debate on § 205 did Hansen suggest that his amendment was to be read more broadly than this, despite the fact that the *Wall Street Journal* article inserted in the record by Representative Crane specifically charged that "union chiefs could use dues money to pay for the soliciting . . . ." 118 *id.*, at H 88. Furthermore, the exemption for the establishment, administration, and solicitation of contributions for voluntary political funds was but one of three exceptions to the general rule against corporations and labor organizations making contributions or expenditures in connection with federal elections. The other two exceptions were communications to, and nonpartisan registration and get-out-the-vote campaigns aimed at, stockholders or union members and their families. In explaining the three exemptions, Hansen clearly regarded each of them as a permissible activity to be financed by general union funds, for each, in his view, was an activity where group interests predominated [42] and "the interest of the minority [was] weakest . . . ." 117 *id.*, at H 11478.

> "At the present time [Hansen summarized] there is broad agreement as to the essence of the proper

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[42] With the exemption for communications to stockholders or union members and their families apparently in mind, Hansen stated, for example, 117 Cong. Rec. H 11478:

"[E]very organization should be allowed to take the steps necessary for its growth and survival. There is, of course, no need to belabor the point that Government policies profoundly affect both business and labor. . . . If an organization, whether it be the NAM, the AMA or the AFL–CIO, believes that certain candidates pose a threat to its well-being or the well-being of its members or stockholders, it should be able to get its views to those members or stockholders. As fiduciaries for their members and stockholders

balance in regulating corporate and union political activity required by sound policy and the Constitution. It consists of a strong prohibition on the use of corporate and union treasury funds to reach the general public in support of, or opposition to, Federal candidates and a limited permission to corporations and unions, allowing them to communicate freely with members and stockholders on any subject, to attempt to convince members and stockholders to register and vote, and to make political contributions and expenditures financed by voluntary donations which have been kept in a separate segregated fund. This amendment writes that balance into clear and unequivocal statutory language." *Id.*, at H 11479.

Thus, § 205 may in one respect have impliedly repealed the substantive law relating to this prosecution.[43] But we need not now decide that question, because even if there has been such an implied repeal, it would not affect this prosecution for reasons to which we now turn.

II

The rule is well established that prosecutions under statutes impliedly or expressly repealed while the case

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the officers of these institutions have a duty to share their informed insights on all issues affecting their institution with their constituents. Both union members and stockholders have the right to expect this expert guidance."

This reasoning, of course, applies as well to solicitations for contributions to voluntary political funds.

[43] See, *e. g.*, *United States* v. *Tynen*, 11 Wall. 88, 92 (1871):

"[I]t is a familiar doctrine that repeals by implication are not favored. When there are two acts on the same subject the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first . . . ."

is still pending on direct review must abate in the absence of a demonstration of contrary congressional intent or a general saving statute. For, "[p]rosecution for crimes is but an application or enforcement of the law, and if the prosecution continues the law must continue to vivify it." *United States* v. *Chambers*, 291 U. S. 217, 226 (1934). This doctrine had its earliest expression in *United States* v. *Schooner Peggy*, 1 Cranch 103 (1801), and has since "been consistently recognized and applied by this Court." *Bell* v. *Maryland*, 378 U. S. 226, 231 n. 2 (1964). As Chief Justice Hughes observed in *Chambers*, *supra*, at 226, "The principle involved is . . . . not archaic but rather is continuing and vital,—that the people are free to withdraw the authority they have conferred and, when withdrawn, . . . the courts [cannot] assume the right to continue to exercise it."

In this case, however, although we do not find a demonstration of contrary congressional intent that would overcome application of this rule if applicable,[44] we do

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[44] The Government's supplemental brief in response to the questions posed in n. 10, *supra*, argues that "[h]ere there is no problem of inferring legislative intent because Congress [in the House debates] clearly expressed its intention that pending prosecutions should not abate." Supplemental Brief for the United States, at 7. Representative Hansen, to be sure, did state in the debate that this prosecution would not abate. See pp. 39–40, *supra*. But he also indicated that the effect of his amendment on pending cases was not, and should not be, a matter of concern:

"Obviously, the members of the joint Senate-House conference committee were not concerned about the suggested effect of this amendment on pending cases. Nor were Members of the other body who approved the conference report by a voice vote. There is no reason for Members of this body to be concerned. This is much needed and meritorious legislation. I strongly urge an overwhelming vote of approval." 118 Cong. Rec. H 95.

More important, Hansen's view that this prosecution would continue was possibly premised, as we have seen, on a mistaken understanding of what § 610 previously provided in terms pertinent to

hold that the general federal saving statute, 61 Stat. 635, 1 U. S. C. § 109, operates to nullify any abatement of the prosecution. That statute provides in pertinent part:

> "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

In *United States* v. *Reisinger*, 128 U. S. 398 (1888), the Court reviewed an indictment, returned in 1885, alleging that the defendant, an attorney, had in 1883 charged clients in pension cases against the Government $100 and $50 respectively in violation of a $10 maximum fee established by Act of Congress, June 20, 1878, 20 Stat. 243. Despite the fact that Congress had expressly repealed that Act and raised the maximum permissible fee in pension cases to $25 in 1884, Act of Congress, July 4, 1884, 23 Stat. 99, the Court sustained the indictment on the basis of the federal saving statute. In *Hamm* v. *Rock Hill*, 379 U. S. 306 (1964), on the other hand, we held that the saving statute would not nullify abatement of federal prosecutions for trespass in public luncheon facilities following enactment of the public accommodation requirements of the Civil Rights Act of 1964. We explained, *id.*, at 314:

> "The federal saving statute was originally enacted in 1871, 16 Stat. 432. It was meant to obviate mere technical abatement such as that illustrated by the

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this case. If his understanding was, in fact, mistaken, we would have to assume that Congress would intend the general rule of abatement "applicable as part of the background against which [it] acts," *Hamm* v. *Rock Hill*, 379 U. S. 306, 314 (1964), to prevail.

application of the rule in [*United States* v. *Tynen*, 11 Wall. 88,] decided in 1871. There a substitution of a new statute with a greater schedule of penalties was held to abate the previous prosecution. In contrast, the Civil Rights Act works no such technical abatement. It substitutes a right for a crime. So drastic a change is well beyond the narrow language of amendment and repeal. It is clear, therefore, that if the convictions were under a federal statute they would be abated."

The instant case is controlled by *Reisinger* rather than by *Hamm*. Section 205 of the Federal Election Campaign Act may, of course, make lawful what was previously unlawful—namely, the financing of the establishment, administration, and solicitation of contributions for voluntary political funds from general union monies. But § 205 does not, in any event, "[substitute] a right for a crime." To the contrary, as in *Reisinger* and *Tynen*, it retains the basic offense—contributions or expenditures by labor organizations in connection with federal elections are still forbidden so long as they are paid for from actual or effective dues or assessments. We therefore hold that even if there has been an implied repeal of § 610, petitioners remain punishable under that provision. We turn now to determine whether the convictions below have been returned consistently with that law.

III

The Government urges:

"The essential charge of the indictment and the theory on which the case was tried was that the [Pipefitters] Fund, although formally set up as an entity independent of Local 562, *was in fact a union fund, controlled by the union*, contributions to which were assessed by the union as part of its dues struc-

ture, collected from non-members in lieu of dues, and expended, when deemed necessary, for union purposes and the personal use of the directors of the Fund." Brief for the United States, at 23 (emphasis added). See also Brief for the United States in Opposition to the Petition for Certiorari, at 11–12.[45]

This was indeed, as we shall shortly see, the theory on which the indictment was drawn, the jury, instructed, and petitioners' convictions, affirmed. It is also the construction of § 610 that we have rejected in favor of the Government's narrower construction that the prerequisite for a permissible political fund is simply that it not be financed by actual or effective dues or assessments. See pp. 27–29, *supra*. On the other hand, we find that the indictment may be read to allege not only that the Pipefitters fund was "a union fund, controlled by the union," but that "contributions to [it] were assessed by the union as part of its dues structure, [and] were collected from non-members in lieu of dues . . . ." For reasons that follow, however, we do not now construe the indictment as making this essential allegation, but leave that question open for determination on remand. We hold now only that the jury instructions failed to require proof of the essential element for conviction and hence reverse the judgment below.

First. Petitioners moved before trial to dismiss the in-

[45] The Government's supplemental brief in response to the questions posed in n. 10, *supra*, confirms that this was the theory of the prosecution:

"In short, the case was tried on the theory that the fund here involved was *not* the kind of a fund which the amended statute permits but was the kind of a fund which was and still is a violation of Section 610—a fund which, while ostensibly separate, was in fact a union fund, supported by money collected as union money and used, when deemed desirable, as general union funds." Supplemental Brief for the United States, at 5 (emphasis in original).

dictment on the ground, Appendix to Petitioners' Brief, at 28:

> "The gist of the indictment is to allege that Section 610 . . . prohibits labor unions from forming parallel political organizations which receive voluntary contributions from the members of the union to be contributed and expended in Federal elections. Congress intended such political organizations to be legally authorized. Thus, the indictment fails to state an offense . . . ."

Petitioners also moved for a bill of particulars, *id.*, at 30:

> "whether it is the government's position and theory of the case that the mere fact that the [Pipefitters fund] was established, maintained, and administered by members, officers, employees, agents, foremen and shop [stewards] of Local 562 is, in and of itself, sufficient to make said Fund, under the law, a Fund of Local 562[;] . . . whether or not it is the government's position that Section 610 . . . prohibits the members, officers, employees, agents, foremen and shop [stewards] of a union from establishing any political organization or fund for the purpose of making contributions and expenditures in connection with [federal] elections . . . [;] . . . whether it is the government's position and theory of the case that the alleged 'regular and systematic collection, receipt, and expenditures of money obtained from working members of Local 562 and from working members of other labor organizations employed under jurisdiction of the defendant Local 562' were voluntary or involuntary collections and contributions." [46]

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[46] These inquiries were addressed to paragraphs 7, 10, and 17 of the indictment, see n. 2, *supra*. Comparable inquiries were generally leveled at other pertinent paragraphs of the indictment.

In a memorandum in opposition to the motion to dismiss, the Government acknowledged petitioners' argument "that the indictment is defective in that it does not allege that the funds involved were not voluntary" and took the position that "[p]roof of the offense charged here does not depend upon whether the funds were volunteered or not by union members. The issue is whether these funds were the general funds of Local 562," *id.*, at 56, which the indictment, in the Government's view, impliedly charged in alleging that petitioners "'unlawfully, wilfully and knowingly did conspire and agree with each other . . . to violate Section 610 . . . .'" *Id.*, at 54. The trial court overruled each of petitioners' motions without opinion.

On appeal the Court of Appeals adopted the Government's theory of the case. First, it ruled that by implication "[t]he gist of the government's claim as reflected by the indictment is that the money in the fund is in truth and in fact money belonging to Local 562." 434 F. 2d, at 1120.[47] The court then held, *ibid.*:

> "The failure of the indictment to allege that the payments to the fund were involuntary is not fatal. . . . If [the allegation that the money in

[47] The court arrived at this conclusion on the basis of *United States* v. *Lewis Food Co.*, *supra*, n. 28, where the Court of Appeals for the Ninth Circuit sustained an indictment under § 610 that failed to allege expressly that an expenditure by a corporation in connection with a federal election was financed from the general corporate treasury (or, as discussed in n. 28, *supra*, that it was made against the wishes of an individual stockholder).

"In our opinion [the court there explained], the allegation in the indictment that the corporation made an 'expenditure' for the stated purpose necessarily infers [*sic*] an allegation that general corporate funds were used. Corporate expenditures normally come from a corporation's general funds and not from some independent fund contributed by shareholders or otherwise obtained." 366 F. 2d, at 713.

the fund is in fact Union money] is established by the evidence, the issue of whether the payment to the fund is voluntary or involuntary is not controlling.

"Of course as observed by the [trial] court in its instructions, the issue of whether the payments to the fund were voluntary is relevant and material on the issue of whether the fund is the property of Local 562. Other considerations such as the intention of the donors as to ownership and control of the fund also bear upon the issue."

This account of the proceedings below indicates that the question of the voluntariness of the contributions to the Pipefitters fund was regarded both at trial and on appeal as a matter relating to, but not essential for the basic charge of the indictment that Local 562 concealed political contributions of Union monies through the subterfuge of a Union-controlled fund. This theory, of course, flies in the face of the legislative history of § 610. The impressive lesson of that history in this regard is that the political contributions in issue violated § 610 if, and only if, payments to the fund were actually or effectively required for employment or union membership. In other words, the essence of the crime in this respect is whether the method of solicitation for the fund was calculated to result in knowing free-choice donations. Whether the fund was otherwise controlled by the Union is immaterial.

We think, nevertheless, that the indictment may be read, consistently with the proper interpretation of § 610, to allege that the contributions to the Pipefitters fund derived from effective dues or assessments.[48] But

[48] The heart of the indictment is found in paragraph 10, which states, *supra*, n. 2:

"It was a part of said conspiracy that the defendants . . . would establish and maintain a special fund . . . , which fund would have

whether the indictment should now be construed in light of the proceedings below to make this allegation is an altogether different question.[49] Since this precise question was not addressed below and has not been briefed or argued before us and since the case must, in any event, be remanded, whereupon the issue may become moot,[50]

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the appearance of being a wholly independent entity, separate and apart from Local 562; and that the defendants . . . would thereby conceal the fact that Local 562 would make contributions and expenditures in connection with [federal] elections . . . ."

As in *Lewis Food Co., supra*, n. 47, it is a fair inference from this allegation that the union made prohibited political contributions and expenditures from general union monies rather than from the knowing free-choice donations of individual members. Moreover, the indictment not only expressly alleges that collections for the fund were "regular and systematic" at an established rate, see paragraphs 7, 13, 15, and 16 of the indictment, *supra*, n. 2, but specifically charges in paragraph 14, *ibid.* (emphasis added):

"It was further a part of the conspiracy that the defendants . . . would waive and fail to enforce Section 180 of the Constitution of the United Association in order to facilitate the payment of monies into the Fund, *by failing to collect* from non-members of Local 562, working under its jurisdiction, *a required travel card fee* of not in excess of Eight Dollars ($8.00) per month, *and in lieu thereof, collecting payments to the Fund at the rate of Two Dollars ($2.00) per eight-hour working day* from such non-members."

These allegations together, although not a model of clarity, might (but we do not now decide for the reasons stated in the text) constitute "a plain, concise and definite" statement, within the meaning of Rule 7 (c) of the Federal Rules of Criminal Procedure, that the conspiracy included the actual or effective assessment of contributions to the Pipefitters fund as part of the Union's compulsory dues structure.

[49] Compare, *e. g., Hagner* v. *United States*, 285 U. S. 427 (1932); *United States* v. *Comyns*, 248 U. S. 349 (1919), and *Dunlop* v. *United States*, 165 U. S. 486 (1897), with, *e. g., United States* v. *Boston & M. R. Co.*, 380 U. S. 157, 159 n. 1 (1965), and *Russell* v. *United States*, 369 U. S. 749 (1962).

[50] Although two of the petitioners died pending decision in this case, see n. 11, *supra*, the Government may decide on remand to seek a new indictment against the remaining petitioners. The

we do not now undertake to decide it. Instead, in the event that the Government chooses to proceed with the indictment before us, petitioners shall have leave to renew their motion to dismiss.

Second. The jury instructions embody an interpretation of § 610 that is plainly erroneous. The trial court refused requests by petitioners for instructions that the jury should acquit if it found that contributions to the Pipefitters fund were made voluntarily.[51] Adopting a contrary view, the court instructed the jury, over petitioners' objections, that it should return verdicts of guilty if the fund "was in fact a union fund, . . . the money therein was union money, and . . . the real contributor to the candidates was the union." "In determining whether the Pipefitters Voluntary Fund was a bona fide fund, separate and distinct from the union or a mere artifice or device," the jury was further instructed to "take into consideration all the facts and circumstances in evidence, and in such consideration . . . [to] consider" 19 factors, several of which related to the regularity, rate, method of collection, and segregation

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present indictment charges that the conspiracy continued up to the date of the indictment, May 9, 1968, and that an overt act was committed in furtherance of the conspiracy on July 14, 1967, in which case it does not appear that the five-year statute of limitations governing noncapital offenses has run. See 18 U. S. C. § 3282; *Grunewald* v. *United States*, 353 U. S. 391, 396–397 (1957). See also *United States* v. *Reisinger*, 128 U. S. 398 (1888) (indictment valid, though returned after law repealed).

[51] Petitioners offered seven instructions on "voluntariness." Two merely used the term without further definition, while others referred to whether the contributions constituted union dues or assessments or were made by the donors for political purposes. See Appendix to Petitioners' Brief, at 1096–1100. Hereafter proper instructions on the question of voluntariness may be framed in terms of the application to the proofs of the language of § 205 of the Federal Election Campaign Act as herein construed. See pp. 35–42, *supra*.

from Union monies of payments to the fund. Others concerned the kinds of expenditures the fund made and the Union's control over them. Still others involved whether the payments to the fund were made voluntarily. In the latter regard the court charged (emphasis added):

> "A great deal of evidence has been introduced on the question of whether the payments into the Pipefitters Voluntary . . . Fund by members of Local 562 and others working under its jurisdiction were voluntary or involuntary. This evidence is relevant for your consideration, along with all other facts and circumstances in evidence, in determining whether the fund is a union fund. *However, the mere fact that the payments into the fund may have been made voluntarily by some or even all of the contributors thereto does not, of itself, mean that the money so paid into the fund was not union money.*" See n. 9, *supra.*

On appeal the Court of Appeals did not address the validity of these instructions other than to agree with the trial judge that "the issue of whether the payments to the fund were voluntary is relevant and material [but not determinative] on the issue of whether the fund is the property of Local 562." P. 53, *supra.*

The instructions, as the Court of Appeals confirmed, clearly permitted the jury to convict without finding that donations to the Pipefitters fund had been actual or effective dues or assessments. This was plain error.[52]

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[52] The Court of Appeals did not directly rule on the validity of the instructions because, in the majority's view, petitioners had failed to preserve their objections on appeal. See 434 F. 2d, at 1125. See also *id.*, at 1128 (Matthes, C. J., concurring). The dissent below makes a strong argument to the contrary, see *id.*, at 1135 (Lay, J.), but we need not address the question, since the instructions were plainly erroneous, the claim of error was brought

The judgment of the Court of Appeals as to petitioners Callanan and Lawler is vacated, and the case is remanded to the District Court with directions to dismiss the indictment against them. See n. 11, *supra*. The judgment of the Court of Appeals as to petitioners Local 562 and Seaton is reversed, and the case is remanded to the District Court for proceedings as to them consistent with this opinion.

It is so ordered.

MR. JUSTICE BLACKMUN took no part in the consideration or decision of this case.

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to the attention of the trial court, and we may notice a plain error not presented. See, *e. g.*, *Silber* v. *United States*, 370 U. S. 717 (1962). See also 434 F. 2d, at 1130 (Heaney, J., dissenting), 1135 (Lay, J., dissenting).

SUPREME COURT OF THE UNITED STATES

No. 70–74

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June 22, 1972]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, dissenting.

The decision of the Court today will have a profound effect upon the role of labor unions and corporations in the political life of this country. The holding, reversing a trend since 1907, opens the way for major participation in politics by the largest aggregations of economic power, the great unions and corporations. This occurs at a time, paradoxically, when public and legislative interest has focused on limiting—rather than enlarging—the influence upon the elective process of concentrations of wealth and power.

I

The majority opinion holds that *unions* lawfully may make political contributions so long as they come from funds voluntarily given to the union for such purpose. The Court seeks to buttress this holding by a long and scholarly presentation of the legislative history of § 610 of the Labor Management Relations Act. But some of that history invites conflicting inferences, and the background of § 205 of the Federal Election Campaign Act of 1971, to which the majority also devotes ex-

tensive attention, is of dubious value in interpreting an earlier statute which on its face is clear and unambiguous.[1]

In its preoccupation with the legislative history, the Court has overlooked the central point involved in this case: that the conviction of petitioners accords with the plain language of the controlling statute. Nor does the majority demonstrate an ambiguity in that statutory language that makes relevant its long journey into the legislative history.

The operative language of § 610 states that: "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with" any federal election. Despite this unqualified proscription, the majority opinion sustains the right of unions and corporations to make political contributions *directly*, provided only that the funds therefor come voluntarily from members, employees or stockholders and are maintained separately from the other funds of the union or corporation.[2] With all respect, this holding is precisely contrary to the express language of the law. At the risk of unnecessary repetition I

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[1] The majority opinion finds confirmation of its interpretation of the legislative history of § 610 in the recently enacted § 205 of the Federal Election Campaign Act of 1971. The majority concludes, however, that § 205 is not retroactive and therefore is inapplicable to this case, a view which I share. I find it unnecessary to the disposition of this case to intertwine the legislative history of the two statutes when only one of them is applicable.

[2] The alleged separate fund involved in this case was segregated only in the sense that there was a separate ledger and bank account. The Court of Appeals held that there was "substantial evidence to support a jury finding that the fund was not a bona fide separate and distinct entity." 434 F. 2d, at 1121. The decision of the majority focuses attention on the issue of voluntariness and gives little indication that a more realistic segregation of the fund is required.

set forth in juxtaposition the operative language in § 610 as contrasted with that of the Court's holding:

Section 610	*Court's Holding*
"It is unlawful . . . for . . . any labor organization to make a contribution or expenditure in connection with any (federal) election . . . ."	"Section 610 does not apply to union contributions and expenditures from political funds donated by Union members of their own free and knowing choice."

If words are given their normal meaning, the statute and the Court's holding flatly contradict each other. One says that it shall be unlawful for a union to make a political contribution or expenditure. The other says this is perfectly lawful, so long as the funds which the union contributes or expends were donated freely and knowingly. The Court has simply added a qualification, not found in the statutory language, which significantly changes the meaning of this Act of the Congress.

The Court's holding, moreover, directly counters the purposes for which § 610 was enacted. Congress passed this legislation to restrict and minimize the influence corporations and unions might exert on elections. In *United States* v. *CIO*, 335 U. S. 106, 113 (1948), with respect to corporations, the Court stated:

> "'This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contributions. Second, the feeling that corporation officials had no moral right to use corporate funds for contributions to political parties without the consent of the stockholders.'"

In commenting on the reasons for extending the legislation to labor organizations, the Court in the same case observes:

> "Its legislative history indicates congressional belief that labor unions should then be put under the same restraints as had been imposed upon corporations. It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." 335 U. S. 115.

The two prinicpal motivations for the enactment of § 610, as identified in *CIO*, are (i) the minimizing of influence of labor unions (as well as corporations) on elections "through monetary expenditures"; and (ii) the elimination of the unfairness "to individual union members" of allowing union management to make political contributions from general union funds. It seems self-evident that both of these legislative purposes will be frustrated by the Court's holding that, despite the language of the statute forbidding union contributions, unions may now make political contributions and expenditures, provided only that the source of a fund is voluntary.

To be sure, there is some langauge in the congressional debates which emphasizes the freedom of union members, as well as that of employees and stockholders of corporations, to make uncoerced political contributions. No one contests this basic freedom. But whatever may have been said in congressional debates, courts are bound by what is written into legislation. If the language of a statute is clear and unambiguous there is no occasion to resort to legislative history. Nor can such history, however illuminating it may seem, be relied upon to contra-

dict or dilute or add unspecified conditions to statutory language which is perfectly clear. Where statutory provisions were "clear and unequivocal on their face," the Court has found "no need to resort to the legislative history of the Act." *United States* v. *Oregon*, 366 U. S. 643, 648 (1961). As Justice Black observed, "no legislative history can justify judicial emasculation" of the unambiguous language of a statute. *Maryland Casualty Co.* v. *Cushing*, 347 U. S. 409, 437 (1951) (Black, J., dissenting).[3]

II

Accepting, as I think we must, § 610 as written, the issue in this case is whether the political fund of Local 562 was in reality a sham or subterfuge through which the union itself made the contributions forbidden by the statute. The indictment in this case was framed on this basis, and the jury was so instructed. The question properly addressed by the Court of Appeals was "whether the contributions or expenditures were [in fact] made by a labor organization." 434 F. 2d 1116, 1121 (1970). After summarizing the evidence submitted to the jury on this issue, the Court of Appeals concluded:

> "There is substantial evidence to support a jury finding that the fund was not a bona fide separate and distinct entity but was in fact a device set up to circumvent the provisions of § 610 and that the fund constituted union money." 434 F. 2d, at 1121.

[3] It has been an ancient and cardinal tenet of statutory construction that "where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for statutory construction." *Lake County* v. *Rollins*, 130 U. S. 662, 670 (1889); *Yates* v. *United States*, 354 U. S. 298, 305 (1957); *United States* v. *Standard Brewery*, 251 U. S. 210, 217 (1920).

It is not normally the function of this Court in a case of this kind to determine whether a jury verdict is supported by substantial evidence. It may not be inappropriate, however, to say—in light of the record before us—that the evidence was more than sufficient to show that union officials supervised closely the collection of the "contributions," sought "contributions" in much the same manner as compulsory assessments, viewed them as part of the total cost burden which the union member had to bear, expended them freely both for union projects and political purposes, and so generally commingled the administration of the Fund with the administration of the union as to entitle the jury to believe the gifts by Local 562 from the fund to candidates for federal office constituted union political contributions in violation of § 610.[4]

The majority opinion of this Court does not contest this view. It concludes, rather, that the jury was erroneously instructed, and that accordingly the verdict and judgment must be set aside. If a new trial is held the jury must be instructed in accordance with the Court's interpretation of § 610 that a union may lawfully make political contributions from a fund it collects and administers so long as the payments into it are voluntary.

It is from this interpretation of § 610—one which in

[4] Even on the issue of voluntariness, which the Court of Appeals rightly found "relevant and material" though "not controlling," 434 F. 2d, at —, the evidence was impressive that the collection scheme was inherently coercive. Since Local 562 had consistently collected contributions to its political funds since 1949, "contributions" appear to have become a customary *de facto* condition to union membership or employment within Local 562's jurisdiction. Moreover, the regularity of these contributions—week-by-week and year-by-year and each in the same amount as requested by the union—seems suspiciously incompatible with the concept of free will gifts.

my view will render the statute largely ineffectual—that I dissent.[5]

III

The consequences of today's decision could be far-reaching indeed. The opinion of the Court provides a blueprint for compliance with § 610, as now construed, which will be welcomed by every corporation and union which wishes to take advantage of a heretofore unrecognized opportunity to influence elections in this country.[6]

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[5] My interpretation of the statute does not imply that no "separate fund" would be permissible. I recognize that, consistently with the statute (as amended by § 205), a union or corporation may be instrumental in establishing a political fund, provided it is a bona fide one—separate and segregated from the union in a genuine, not merely formalistic way. For example, such a fund might be managed by a separate nonprofit entity, with responsible trustees not subservient to the union or corporate sponsor, who engage independent auditors, who make regular reports to contributors, and who provide realistic means by which contributors can express their preference as to political candidates or parties. Safeguards would be required to assure that contributions were not coerced, either directly or by means of an inherently coercive system or relationship. Such a bona fide fund would contrast quite sharply with that operated by Local 562, where there were no by-laws, no constitution, no independent trustees, no audit, no report to contributors, or other indications of genuine separateness or segregation; and where the union itself collected, operated and expended the "contributions" in substantially the same manner as union dues and assessments.

[6] I recognize, of course, that the recent enactment of § 205 of the Federal Election Campaign Act of 1971 has supplemented and extended § 610 in defining permissible limits of union and corporate contributions. But § 205 still leaves intact the operative language of § 610 which explicitly proscribes political contributions by unions and corporations. The interpretative gloss today added unnecessarily on this language will result in rendering ineffectual the basic intention of the Congress to prevent the intrusion of corporate and union power into our political system.

It may be that the unions, by virtue of a system of collecting "political contributions" simultaneously with the collection of dues and regularlizing such collections to the point where they are indistinguishable from dues, will be the primary beneficiaries. But the corporations are more numerous than the unions. They have millions of stockholders and hundreds of thousands of nonunion employees. Both unions and corporations have large financial resources. Today's interpretation of § 610 will enable a more direct and extensive political employment of these resources by both union and corporation.

By refusing to affirm the judgment below, the majority renders the ultimate fate of this litigation uncertain. If, on remand, the techniques of Local 562 should be sanctioned, other unions and corporations could easily follow Local 562 and obtain from members, employees and shareholders a consent form attesting that the contribution (or withholding) is "voluntary." The trappings of voluntariness might be achieved while the substance of coercion remained. Union members and corporate employees might find themselves the objects of regular and systematized solicitation by the very agent which exercised direct control over their jobs and livelihood.

The only remaining requirement to meet the new standards is that the fund be separate from other union or corporate funds, although under the majority's interpretation of § 205 it may be established, administered and the contributions to it solicited by the union or corporation with their own funds. Again, if Local 562 were to provide the standards, the separateness of such a fund need be nothing more than separate ledger and bank account.

In sum, the opinion of the Court today, adopting an interpretation of § 610 at variance with its language and purpose, goes a long way toward returning unions and corporations to an unregulated status with respect to

political contributions. This opening of the door to extensive corporate and union influence on the elective and legislative processes must be viewed with genuine concern. This seems to me to be a regressive step as contrasted with the numerous legislative and judicial actions in recent years designed to assure that elections are indeed free and representative.

I would affirm the judgment below.